

BARRY WAYNE MATTINGLY 30(b)(6)
RED BARN MOTORS vs. COX ENTERPRISES

October 19, 2016

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF INDIANA
3 INDIANAPOLIS DIVISION
4

5 RED BARN MOTORS, INC., PLATINUM MOTORS INC., et
6 al.

8 PLAINTIFFS

9 V.

10 CASE NO. 1:14-cv-01589-TWP-DKL

11
12 COX ENTERPRISES, INC., et al.

13
14 DEFENDANTS
15

16
17 DEPOSITION FOR THE DEFENDANTS,
18 COX ENTERPRISES, INC., et al.:
19

20 The Deposition of Rule 30(b)(6) Witness, Barry
21 Wayne Mattingly, on Behalf of Mattingly Auto Sales,
22 Incorporated, taken in the above-styled matter at
23 Frost Brown Todd, LLC, 400 West Market Street, 3200
24 Mercer Tower, Louisville, Kentucky, on the 19th day of
25 October, 2016, beginning at 9:04 a.m.



EXHIBIT 8

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1 A. No.

2 [WHEREUPON, phone rings.]

3 MR. JURKIEWICZ: Are we -- no question
4 pending?

5 MR. MCCARTER: No.

6 BY MR. MCCARTER:

7 Q. All right. And do you remember the name
8 of the officer or officers you met with?

9 A. Yes.

10 Q. What was --

11 A. Curtis Mouser. And I don't -- don't know
12 how to spell that for you. I'm sorry.

13 Q. Okay. There was the one interview,
14 and --

15 A. Yes.

16 Q. -- did he pull records from you?

17 A. Yes. Well, no. He actually had pulled
18 them himself.

19 Q. From where?

20 A. The courthouse. All property records,
21 everything, financial records from liens, that kind
22 of thing.

23 Q. All right. You said it was embezzling, but
24 did he give you any more sense specifically what
25 he was looking at?

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1 A. He was looking at to see what we --
2 basically, he was looking for money possibly that
3 we had borrowed. That's what he was -- told us he
4 was looking at.

5 Q. Okay. But we're not talking about --

6 A. Liens on properties and that kind of
7 thing.

8 Q. Okay. Did he ever formally tell you he
9 was done looking?

10 A. Yes. His -- I think his quote was, and he
11 looked at my lawyer as he looked at the paper and
12 said, "I can't find anything here."

13 Q. Okay. And that all -- that all happened in
14 May of 2012?

15 A. Yes.

16 Q. Okay. How -- do you have any other
17 employees now?

18 A. No.

19 Q. Have you in the last ten years or so?

20 A. No.

21 Q. Do you have any other representatives
22 who might buy cars for you or the like?

23 A. Yes.

24 Q. And who are they?

25 A. Different people. Just to give you some

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1 names, Kenny Barker.

2 Q. Okay.

3 A. In the past -- in the past, a guy named
4 Sherman Dow, Frankie Anthony. I think -- I think
5 Butch Fentress.

6 Q. Contress?

7 A. Fentress, F-e-n-t-r-e-s-s.

8 Q. Okay. Have these folks all been reps for
9 you in the last ten years or so?

10 A. Yes.

11 Q. Are any of them still reps for you?

12 A. Yes.

13 Q. And by "reps," I mean representatives
14 who might --

15 A. Per -- per -- person who --

16 Q. -- who might buy or sell cars for you?

17 A. Yes.

18 Q. Okay. And they do that at auctions?

19 A. Yes.

20 Q. And again talking about Mr. Barker, Mr.
21 Dow, Mr. Anthony, Mr. Fentress, did they have
22 their own dealerships, or did they buy personally
23 for you?

24 A. They bought cars for -- through me; yes.

25 Q. Okay. Do they do any selling for you?

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1 A. Vehicles they bought were generally for
2 themselves to sell or for family members or
3 something like that to re-sell.

4 Q. But they would still do that on your
5 account?

6 A. Yes.

7 Q. All right. So what auctions are you
8 dealing at today?

9 A. Wolfes, W-o-l-f-e-s, Wolfes Auto Auction,
10 and that's in Evansville.

11 Q. Any others?

12 A. That's it, pretty much it. I do go to a
13 few, but rarely, E-town Auto Auction.

14 Q. Say it again.

15 A. E-town.

16 Q. E-town?

17 A. Elizabethtown Auto Auction.

18 Q. And where -- is that Kentucky?

19 A. Yeah, Kentucky. That's actually --
20 actually outside of E-town, just call it E-town. And
21 then also one more that I go to occasionally is
22 Clark County Auto Auction.

23 Q. Can you think of any others you've gone
24 to since May of 2012?

25 A. That's it.

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1 Q. Okay. You don't have internal legal
2 counsel; do you?

3 A. No.

4 Q. Okay. How many cars are on your lot
5 now?

6 A. One.

7 Q. Do you have more than one lot?

8 A. No.

9 Q. Where is your lot?

10 A. Hardinsburg, Kentucky.

11 Q. Can you give me the full address?

12 A. Yeah. It's 3826 South Highway 261, and
13 that's in Hardinsburg, H-a-r-d-i-n-s-b-u-r-g,
14 Kentucky.

15 Q. Okay. Since you incorporated in 2003ish,
16 have you had other lots?

17 A. No.

18 Q. When you're buying and wholesaling cars
19 today, do you bring those back to your lot, or do
20 they go straight to other locations?

21 A. Usually, bring them to the lot.

22 Q. And what's an average number of cars
23 you've had on your lot since 2012, roughly?

24 A. Probably one to two.

25 Q. And before 2012?

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1 A. We had as many as 15 to 20.

2 Q. Is it fair to say that would matter more
3 when you have retail buyers, the need --

4 A. Yes.

5 Q. -- to see the cars. Now, I understand you
6 buy and sell cars. Is it the profit on those cars
7 that you -- is that how you make your money?

8 A. Yes.

9 Q. Okay. So you're trying to buy them low
10 and sell them high?

11 A. Correct.

12 Q. Do you do anything else to make money
13 as Mattingly Auto Sales, Inc.?

14 A. No.

15 Q. No financing?

16 A. No.

17 Q. No service?

18 A. No.

19 Q. No parts?

20 A. No.

21 Q. Okay. Has that been true the whole time?

22 A. The whole time.

23 Q. Okay. Do you specialize in a particular
24 type of car?

25 A. No.



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1 Q. No. You still buying classic cars?

2 A. No.

3 Q. All your cars are used, though?

4 A. Yes.

5 Q. But they can be any different age?

6 A. Correct.

7 Q. Any different value?

8 A. M-hm.

9 Q. You can sell a high end Porsche and -- as
10 well as a low end --

11 A. Not where --

12 Q. -- Sentra?

13 A. -- I'm from.

14 Q. Okay. So you are specializing a little bit
15 in lower end cars?

16 A. Yes.

17 Q. Okay. And what's an average price for
18 it?

19 A. The one we have for sale today is \$2200.

20 Q. Just curious, what kind of car is it?

21 A. It's a 2002 Mazda Millenia.

22 Q. Has the type of car you specialize in
23 changed since 2012?

24 A. Yes.

25 Q. In what way?

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1 A. Basically, lower end cars, not -- not the
2 higher dollar SUVs, trucks, sporty cars, you know.
3 From, say, a \$15,000 car, now we're down to the
4 under \$5,000 cars.

5 Q. Okay. But even before 2012, we're
6 talking mid range 15, 20,000?

7 A. M-hm.

8 Q. Okay. Do you ever get cars from other
9 dealers?

10 A. Yes.

11 Q. Outside of an auction?

12 A. Yes.

13 Q. Okay. And when and what does that look
14 like?

15 A. Just the same. Just if they have
16 something they want to -- they don't want to --
17 they'll take to the auction they don't want, I'll
18 shoot them a price if I -- you know, if it's worth the
19 money, I'll buy it, they'll sell it to me.

20 Q. Okay. Any estimate of what percentage
21 of your deals are from --

22 A. No. No. Wouldn't -- wouldn't have any
23 idea.

24 Q. Okay. Besides auctions, other dealers,
25 any other way you get cars?

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1 A. That's about it.

2 Q. Trade-ins?

3 A. Yes. If -- if there's a trade-in, yes, we
4 do that.

5 Q. Okay. What about online? Do you buy
6 anything online?

7 A. No.

8 Q. You're aware of SmartAuction, eBay
9 Motors --

10 A. Yes.

11 Q. -- those kind of things?

12 A. Yes.

13 Q. And you don't use any of those?

14 A. No.

15 Q. Okay. Is that by choice?

16 A. Yes. I just don't -- nothing worth putting
17 on there.

18 Q. Okay. I just wanted -- I asked you this
19 before, but you don't sell any add-ons or anything
20 like that, insurance products, any --

21 A. No. No.

22 Q. Okay. So if -- if you do have a retail
23 deal, what is the form of payment typically on
24 those? Is it cash or something else?

25 A. Cash, check, whatever; m-hm. We don't

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1 finance unless they have their own financing or
2 something. We don't do it ourselves.

3 Q. Have you ever done self financing?

4 A. No, not through us. We used to finance
5 through another dealer who had financial options.

6 Q. Okay.

7 A. We never had nothing ourselves.

8 Q. So if the buyer comes in with cash, a
9 certified check, or a bank loan, you can take that?

10 A. Right.

11 Q. But you won't do a buy here pay here
12 deal?

13 A. No.

14 Q. Okay. When -- what period of time were
15 you doing the buy here pay here deals through
16 another dealer?

17 A. Well, it wasn't -- it was through a bank,
18 through a bank. It was never a buy here pay here.
19 It was -- it -- we quit that in 2012, I guess.

20 Q. Okay. Who was that bank?

21 A. Fort Knox Credit Union.

22 Q. Say it again.

23 A. Fort Knox -- Fort Knox Federal Credit
24 Union.

25 Q. Okay. When you were working with Fort

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1 Knox, what did those contracts look like? Was it
2 just a loan from Fort Knox to the consumer, and
3 then they would pay you directly?

4 A. Yes. Actually, the -- the loan, I would go
5 through another dealer. They did all the
6 paperwork. I would -- I -- I didn't have an account
7 with them. I would just send the paperwork, the
8 app -- they would fill out an application, I would
9 send it to that dealer, that dealer would do all the
10 paperwork.

11 MR. JURKIEWICZ: Matt?

12 MR. COMAN: I'm here.

13 MR. JURKIEWICZ: We're on the record.

14 Matt Coman is joining.

15 MR. COMAN: I apologize for the
16 interruption.

17 BY MR. MCCARTER:

18 Q. And so please tell me if this is wrong, but
19 so you -- you would make the deal with the
20 consumer, then you would send the paperwork to
21 another dealer, and they would send it in to Fort
22 Knox Credit Union?

23 A. Yes.

24 Q. And then Fort Knox would cut a check to
25 you?

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1 A. To -- no, to Wheatley, to the -- the
2 dealer, to the dealer, and then they would pay me.

3 Q. Okay. And what's Wheatley's full name?

4 A. It was Wheatley Motor Company. They
5 have since gone out of business.

6 Q. Do you know whether Wheatley was -- was
7 running a buy here pay here contract where they
8 would keep getting payments from the consumer,
9 or was everything paid off up front by their --

10 A. Everything was paid by Fort Knox Credit
11 Union to them.

12 Q. Okay. Any other form of financing you've
13 used for your sales?

14 A. No. Not our sales; no.

15 Q. Okay. When you get a trade-in, how do
16 you deal with that?

17 A. You just value it, and they pay the
18 difference.

19 Q. So you write a contract for the new car,
20 you give some trade-in credit, and they pay the
21 difference?

22 A. Correct.

23 Q. In some of those cases, you have to pay
24 off a previous lienholder?

25 A. Some; yes.

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1 name?

2 A. Yes.

3 Q. Okay. All right. So since 2012, you
4 mentioned the three auctions that you -- you've
5 attended, Wolfes, Clark County, and tell me the
6 third again.

7 A. Clark County. What was the other?
8 E-town. Elizabethtown.

9 Q. Okay. Right. And before 2012, what
10 auctions were you attending?

11 A. Them three, as well as Manheim
12 Louisville and Manheim Nashville.

13 Q. Any others?

14 A. That's -- I think that's it.

15 Q. So between 2003 and 2012, the -- the -- it
16 was primarily those five auctions that you went to?

17 A. Yes.

18 Q. Okay. Did you do any buying online
19 during that period?

20 A. No.

21 Q. And sometimes it would be you attending,
22 sometimes it would be one of these
23 representatives --

24 A. Yes.

25 Q. Okay.

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1 MS. LASKY: Don't forget to let him
2 finish his entire question. You're doing great, just
3 give him a little more time.

4 BY MR. MCCARTER:

5 Q. Is it fair to say those wholesale auto
6 auctions kind of work in the same manner?

7 A. Yes.

8 Q. Okay. Can you tell me just generally --
9 I -- and then we'll break it down -- how it works?
10 How do you go in, get a car from an auction?

11 A. Basically, you just go in with your card,
12 go up there, bid on it through the on kube --
13 through the lines. Once you get your ticket, go
14 pay for it, and sign the ticket, get your gate pass,
15 and go home.

16 Q. With the car or without the car?

17 A. With the car.

18 Q. Okay. So it's a competitive environment
19 where you've got multiple dealers trying to get the
20 car?

21 A. Yes.

22 Q. Somehow you scout out the ones you
23 want, and then you bid on them, and if you win the
24 bid, you have to pay for the car, and then you take
25 it?

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1 A. Yes.

2 Q. Okay. Have you ever sold at auctions?

3 A. Yes.

4 Q. How often?

5 A. Well, that's the -- part of the wholesale
6 stuff. You know, it was back before 2012
7 practically every week.

8 Q. Okay. So you've been both the buyer and
9 seller at auction?

10 A. Yes.

11 Q. On hundreds of cars?

12 A. Yes.

13 Q. Okay. How -- how does it work from the
14 seller's side? When do you get paid by the
15 auction?

16 A. If I sell?

17 Q. Yeah.

18 A. If I turn in a title, when you -- when you
19 run a car -- if you sell it, I -- I would have to go up
20 front to give them the title, you know, if it's out of
21 state or Kentucky title, Kentucky being you have to
22 have the dealer signed properly. They turn it in,
23 and they issue me a check.

24 Q. Okay. And that check comes from the
25 auction, not the buyer?

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1 A. Auction; m-hm.

2 Q. And so when you're a buyer, you pay the
3 auction, when you're a seller, you get paid by the
4 auction?

5 A. Correct.

6 Q. Okay. Is that part of the reason you go
7 to auction, to sort of make sure that you get paid
8 if you're a seller?

9 A. Yes.

10 Q. And for the buyer, that's a way to be sure
11 you get a title?

12 A. Yes.

13 Q. And can the buyer usually take the car
14 immediately, or is there any kind of waiting
15 period?

16 A. Usually, if it's -- as long as there's no
17 problems with the car, they have that opportunity
18 to ride and drive, to inspect the car to make sure
19 it's proper, what they advertised, and if it's given
20 a time frame, let's say an hour to check it out --

21 Q. Yeah.

22 A. -- then you have to go up and pay for it,
23 and you take it the same day.

24 Q. And is it my understanding that there's --
25 or it is my understanding that there's some

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1 situations where you might have longer if there
2 was some issue with the car, if it's a --

3 A. Yes.

4 Q. -- frame damage or something?

5 A. Yes.

6 Q. Okay. So there's -- the auction provides
7 certain relief in cases if a car wasn't disclosed
8 properly?

9 A. Yes.

10 Q. So what are the different ways a buyer
11 can pay for the car at the auction?

12 A. Well, you can write them a check, or if
13 you have a floor plan company you can put it on
14 the floor plan.

15 Q. I'll come back to the floor plan in a
16 minute, but can you also pay cash?

17 A. Yes. Check or cash; yes.

18 Q. Does it have to be a certified check or
19 business check or what?

20 A. Business check.

21 Q. Okay. So in all cases, you have to find
22 some way to pay for the car before you take it?

23 A. Yes.

24 Q. All right. So you said floor plan is one
25 way you can get the car out of the auction.

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1 Explain to me what that means, and how does that
2 work?

3 A. If I had a -- if I had an auction ticket
4 before from where I purchased the car --

5 Q. M-hm.

6 A. -- I would take it to the person that's
7 called a finance officer, whoever it would be that
8 does that, that's their job. They would scan it,
9 initial it, scan it, put it in their system, stamp it,
10 initial it, something so where you can get it out of
11 the gate. Like make like a gate pass of where you
12 can take the car out.

13 Q. But they would have to know that you had
14 credit available from the floor planner in advance?

15 A. Right.

16 Q. Okay. And tell me if this is wrong, but a
17 floor -- a high level floor planner is somebody you
18 have a line of credit with to buy cars?

19 A. M-hm.

20 Q. Right?

21 A. Yes.

22 Q. Okay. And so somehow the floor planner
23 and the auction communicate about how much
24 credit you have as Mattingly Auto Sales, and then
25 you can just say, "Put it on my floor plan"?

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1 A. Yes.

2 MS. LASKY: Object to the form.

3 BY MR. MCCARTER:

4 Q. Have you used all those different forms of
5 payment: cash, check, floor plan?

6 A. Yes.

7 Q. So at a high level after you get a car at
8 auction, then what do you do with it as far as
9 business?

10 A. Just --

11 MS. LASKY: Object to the form. You can
12 answer.

13 THE WITNESS: Okay.

14 A. Just take it to the lot, clean it up,
15 whatever it needs to be, put it up for sale.

16 BY MR. MCCARTER:

17 Q. Okay. Would you typically re-sell a car
18 at the same auction, or would you do something
19 differently?

20 A. Typically, the way I operate I would take
21 it to another auction.

22 Q. And so you might buy it at an auction
23 where it's less valued, and take it to an auction
24 where it's more valued?

25 A. Yes.



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1 Q. So you said when you're the seller you
2 have to provide the title to get paid; right?

3 A. Yes.

4 Q. And so does that sometime -- does that
5 always happen on sale day?

6 A. I tried to, but sometimes it didn't happen,
7 you know. They would -- I wouldn't get paid -- I
8 never got paid until I provided them a title.

9 Q. But that sounds like some sellers can
10 provide it later; is that right?

11 A. Oh, yeah, you -- you can turn it in later.
12 They would charge you a fee for that, but I would
13 never get paid unless I produced a title.

14 Q. All right. But does a buyer -- does a
15 buyer know the title is not going to be available
16 immediately?

17 A. Some do; yes.

18 Q. And how do they -- how do you know that?

19 A. Well, it's -- it's always have to announce
20 it. It's called TA.

21 Q. Okay.

22 A. It would be title absent. And it kind of
23 goes up on the screen, and they know there will
24 not be a title at that time.

25 Q. Okay. Did you ever buy a car TA?

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1 A. Yes.

2 Q. What -- what -- why would you buy a car
3 TA if you can't immediately re-sell it?

4 A. Because eventually they'll -- they'll get
5 me title. They have a -- a time frame usually of
6 three weeks. If they don't provide you with a clear
7 title, you can take the car back, and the deal is
8 canceled.

9 Q. Okay. In that mean -- in the meantime,
10 can you go ahead and get the car ready and start
11 offering it?

12 A. Yes.

13 Q. Did you ever re-sell a car before you got
14 the title from the auction?

15 A. Yes.

16 Q. How often has that happened?

17 A. It was rare.

18 Q. Did you ever have a situation where that
19 title never shows up and you have to unwind the
20 deal?

21 A. It -- I have had a few, very few,
22 fortunately.

23 Q. And I know we've -- this has been a fairly
24 general conversation, but has that been the sort of
25 process at auction the whole time from 2003

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1 to 2016?

2 A. Yes.

3 Q. Okay. All right. We -- we talked about
4 these floor plan lines of credit. Is that a common
5 term in the industry, floor plan?

6 A. Yes.

7 Q. So what floor plans have -- has Mattingly
8 Auto Sales worked with?

9 A. We had AFC, DSC, MAFS, M-A-F-S, which
10 you're familiar with, and, of course, now NextGear.

11 Q. All right. What period did you work with
12 AFC?

13 A. They were -- they were my first. I'm
14 going to say starting in 2003, give or take.

15 Q. Until when?

16 A. To two thousand probably 9.

17 Q. And what was the size of your line during
18 that period?

19 A. Probably 100,000.

20 Q. And why did that get closed at some
21 point?

22 A. I closed it. Their fees were high.

23 Q. All right. And what period did you work
24 with DSC?

25 A. I'm going to say 6 or 7 through 2012.

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1 Q. And the size of your lines during that
2 period?

3 A. It increased up to 150 is my final -- final
4 line.

5 Q. From 100?

6 A. From 100 to 150.

7 Q. And high level, that means you can buy
8 \$150,000 worth of cars and put them on that line
9 of credit?

10 A. Yes.

11 Q. Okay. And what period were you with
12 MAFS?

13 A. I'd say from 2003 or 4 to 2012.

14 Q. Do you remember the size of that line?

15 A. I believe it was 100, but I -- I don't
16 remember.

17 Q. And so there's some overlap between
18 those three lines so you would -- you would have
19 multiple lines at the same time sometimes?

20 A. Yes.

21 Q. Okay. And why would you have more than
22 one?

23 A. Just more -- more credit.

24 Q. So you can buy more cars that way?

25 A. Yes.



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1 Q. Okay. And you said NextGear, but is
2 that -- did you have a separate line with NextGear,
3 or was that DSC just became NextGear?

4 A. It was when NextGear -- actually, it was
5 DSC, MAFS, and then they combined.

6 Q. Okay.

7 A. I never had actually a NextGear account.
8 They were owned by NextGear.

9 Q. So your DSC and MAFS lines were closed
10 before they joined and called it NextGear?

11 A. They actually -- right the same year. I
12 think they joined in 2012.

13 Q. Sure. But you -- you never had a line
14 called a NextGear line?

15 A. No. No.

16 Q. All right. And so when you use a floor
17 plan to buy at auction, I think you just said you
18 tell the finance person to put it on your line?

19 A. M-hm. Correct.

20 Q. You have to tell them which, AFC --

21 A. Yes.

22 Q. -- DSC?

23 A. Yes.

24 Q. Okay. And do they call right then, or do
25 you see how they interact with the floor planner to

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1 know your credit?

2 A. No. They actually, they -- most -- a
3 majority of the time they just scanned it and went
4 on. I never -- never was close to being over, so
5 there never was a problem.

6 Q. Okay. You never got a call the next day
7 saying you didn't have the credit?

8 A. Right.

9 Q. Okay. And do you have any
10 understanding of sort of why these floor planners
11 would let you use their money?

12 A. I just -- they fill out an application.
13 That's the only reason.

14 Q. I just meant, what is -- they're just
15 getting something, interest and fees, I guess, or --

16 A. Oh, yes. Yes, interest and fees.

17 Q. And so, if you put a -- if you buy a car at
18 auction, you put it on your DSC line, you don't
19 have to pay cash for it that day?

20 A. No.

21 Q. But presumably, you have to pay DSC
22 back for it later?

23 A. Whenever I sell it or pay it off; yes. And
24 they were. . .

25 Q. All right. So just generally under a DCS

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1 line during 2006-2012, what was your
2 understanding of when payment would be due for
3 the money you borrowed?

4 A. When I sell --

5 MS. LASKY: Object to the form.

6 A. When I sold the car.

7 BY MR. MCCARTER:

8 Q. That second? Within a day?

9 A. I think they had -- I think in their
10 paperwork they had a three-day period. I'd have
11 to look back at that to see.

12 Q. What if you never sold the car? Is there
13 some sort of cut off?

14 A. Yeah. I think -- I don't want to --

15 MS. LASKY: Object to the form. Go
16 ahead.

17 A. I -- I believe it was 120, 120 days with
18 DSC. I could be wrong.

19 BY MR. MCCARTER:

20 Q. Okay.

21 A. But I rare -- I rarely ever -- never -- I
22 don't think it ever happened. I either sold it or
23 took it back to the auction, whatever.

24 Q. But there -- there would be a maturity
25 date if you didn't pay?

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1 A. Correct.

2 Q. Okay. And did AFC work the same way?

3 A. Yes.

4 Q. What -- do you remember what their
5 maturity date was?

6 A. No, I don't.

7 Q. What about MAFS, the same way?

8 A. Pretty much the same.

9 Q. So you'd have to pay a car if you sold it
10 within a short time period, and then, if you didn't
11 sell it, there would be a cut off?

12 A. Right.

13 Q. Okay. Were those floor plans limited to
14 cars you bought at auction?

15 A. No.

16 Q. So you could take a car you bought from
17 another dealer and put it on floor plan?

18 A. Trade; m-hm.

19 Q. Okay. Was that process any different?
20 How did you --

21 A. No.

22 Q. Well, how -- so did they pay the dealer
23 directly?

24 A. No, they paid -- they would pay me.
25 Yeah, they paid me.

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1 Q. So it sounds a little different; right?
2 You're going to have to submit some paperwork --

3 A. Yeah. Yes.

4 Q. -- and you're going to get payment?

5 A. I would -- I would produce a title to them,
6 and they would pay me for the trade. Put it on the
7 floor plan for that amount, I guess you'd say.

8 Q. So how did they know the amount to
9 finance?

10 A. Usually, my treasurer would work the
11 money, or they have a -- they have a guide they go
12 by.

13 Q. So some way you would show them what
14 you paid for it, they would compare to it some
15 value guide, and --

16 A. M-hm.

17 Q. -- they would finance that amount?

18 A. Yes.

19 Q. Okay. What about at auction, did they
20 ever reject your financing because you paid too
21 much for it?

22 A. No.

23 Q. So they would just go with the auction
24 price?

25 A. Yes.



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1 Q. Did you have some understanding that the
2 cars you acquired were -- were collateral for the
3 loans?

4 A. Yes.

5 Q. Do you understand what I mean by
6 collateral?

7 A. Yes.

8 Q. They could pick up the cars if they didn't
9 get paid?

10 A. Yes.

11 Q. Okay. And that was true of all the floor
12 planners?

13 A. Yes.

14 Q. Do you -- do you know what security
15 interest means?

16 A. No.

17 Q. Okay. And so you would -- the -- the
18 general way it worked, would -- you would repay
19 the principal you borrowed, plus interest, plus fees
20 to the floor planner for the cars you bought?

21 A. Yes.

22 Q. Okay. How would you know exactly how
23 much to pay them? Like, how much the principal
24 was, plus the interest, plus the fees?

25 A. Computer. They had a website with the

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1 balances.

2 Q. DSC did?

3 A. Yes, both. And MAFS.

4 Q. So each time you needed to pay off a
5 unit, you would look it up on the website and then
6 pay that amount?

7 A. Yes.

8 Q. Was that typically by ACH electronic
9 payment or by check?

10 A. Yes, ACH.

11 Q. ACH; okay. Was that true the whole time
12 you were with DSC?

13 A. Yes.

14 Q. Is that true the whole time you were with
15 MAFS?

16 A. Well, MAFS -- MAFS worked a little
17 different. I could pay off online or at the auction,
18 because they held the titles at the auction. So it
19 was convenient.

20 Q. And you did both?

21 A. Yes.

22 Q. What about statements, did you get
23 statements from DSC?

24 A. No. It -- only thing we had was the
25 online.

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1 Q. Okay. Did you have a secure log-in you
2 could look at any time and see what you were --
3 what you owed DSC?

4 A. Yes.

5 Q. Okay. Same with MAFS?

6 A. Yes.

7 Q. How about AFC?

8 A. I -- they might have. I don't remember
9 about AFC.

10 Q. Okay. So other than AFC, DSC, and
11 MAFS, have you ever entered into any inventory
12 financing arrangement with anybody else?

13 A. No.

14 Q. Do you have any inventory financing
15 arrangement now?

16 A. No.

17 Q. How do you pay for cars you buy now?

18 A. Just strictly cash.

19 Q. And that's out of just operations of the
20 business?

21 A. Yes.

22 Q. Okay. But at Wolfes, E-town, and Clark
23 County, they still take your business checks?

24 A. Yes.

25 MS. LASKY: Can we just take a quick --

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1 MR. MCCARTER: Yeah.

2 MS. LASKY: -- break?

3 MR. MCCARTER: That's fine.

4 [WHEREUPON, a brief recess is taken.]

5 [WHEREUPON, document referred to is marked
6 Defendants' Exhibit 2 for identification.]

7 BY MR. MCCARTER:

8 Q. Let me show you a couple of documents,
9 break up the monotony here. I'll represent to you
10 this is just a printout from the State of Kentucky
11 website, and it shows Mattingly Auto Sales, Inc.
12 being incorporated in March of 2003; do you see
13 that?

14 A. Yes.

15 Q. Does that look right to you?

16 A. Yes.

17 Q. Okay. And it's -- as you testified earlier,
18 it shows you and Ms. Mattingly as the officers; do
19 you see that?

20 A. Yes.

21 Q. Okay. Do you see anything on this that
22 looks wrong to you?

23 A. No, I don't.

24 Q. Okay. Do -- side question: Do you --
25 does Mattingly Auto Sales do its own tax returns?

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1 A. Yes.

2 Q. You file tax returns in the name of
3 Mattingly Auto --

4 A. Yes.

5 Q. -- Sales, Inc.?

6 A. Yes.

7 Q. And who prepares those?

8 A. Jackson Hewitt.

9 Q. Okay. And you have those going back
10 several years?

11 A. Yes.

12 Q. Do you have any from pre-2012?

13 A. Prob -- I'm sure we do, but I don't know
14 how far back we kept.

15 Q. Okay. And if I didn't say it, that's
16 Exhibit 2. I'm going to show you what we're going
17 to call Defendants' Exhibit 3.

18 [WHEREUPON, document referred to is marked
19 Defendants' Exhibit 3 for identification.]

20 BY MR. MCCARTER:

21 Q. It's two pages front -- one front, one
22 back. And I'll represent to you this is just a
23 printout from what appears to be your website, and
24 you can see at the bottom it was printed on
25 October 12th, 2016; do you see that?

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1 A. Yes.

2 Q. Does this look like your website?

3 A. No, this is not my website or my car lot.

4 Q. So it's not you at all?

5 A. No.

6 Q. Okay. You -- you see on that first page,
7 even though it's got a Hardinsburg office --

8 A. M-hm.

9 Q. -- this is not you?

10 A. No, that's not my office.

11 Q. Do you know who -- who this dealer is?

12 A. Yes.

13 Q. Do they have any connection to you?

14 A. No. Other -- well, one. Name.

15 Q. Okay.

16 A. Outside of that, no.

17 Q. All right. Do you have a website?

18 A. No.

19 Q. Okay. All right. It's not a very important
20 exhibit, but it's now marked as an exhibit.

21 All right. I think you said your relationship
22 with DSC would have began around 2006?

23 A. I believe so.

24 Q. And your relationship with MAFS began
25 before that; right?

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1 A. Yes.

2 Q. Okay. I'll go ahead and show you another
3 document we may use later. This will be
4 Defendants' Exhibit 4.

5 [WHEREUPON, document referred to is marked
6 Defendants' Exhibit 4 for identification.]

7 BY MR. MCCARTER:

8 Q. And these I'll represent to you are your
9 interrogatory responses in this case. You --
10 take -- take as much time as you want, but I'm
11 not -- I'll call your attention to anything specific
12 we need to cover, but have you seen this document
13 before?

14 A. Yes.

15 Q. And do you recall participating in
16 preparing these responses?

17 A. Yes.

18 Q. And you reviewed and they're true, to the
19 best of your knowledge?

20 A. Yes.

21 Q. Okay.

22 MS. LASKY: And I'll represent to you we
23 have a verification that I'll give to you-all
24 tomorrow.

25 MR. MCCARTER: Okay. Signed by Mr.

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1 Mattingly?

2 MS. LASKY: Correct.

3 MR. MCCARTER: Okay.

4 BY MR. MCCARTER:

5 Q. And so, if you -- if you flip over to
6 Number 2, it says you started with -- I think it says
7 you started with you DSC in late November
8 of 2006, late -- late October and early November
9 of 2006; is that --

10 A. Which one --

11 Q. -- do you see that?

12 A. No. Let me get to that page.

13 Q. It's Page 4.

14 A. Okay.

15 MS. LASKY: It's right here.

16 THE WITNESS: Okay.

17 A. All right. Now, could you repeat the
18 question?

19 BY MR. MCCARTER:

20 Q. All right. So this -- this language in the
21 middle of Response Number 2 says in late October,
22 early November 2006, and then that's when you
23 executed a DSC note; do you see that?

24 A. Yes.

25 Q. Okay. Do you recall sort of how your



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1 relationship with DSC began? Like, how did you
2 find DSC, or how did they find you?

3 A. They -- they had a representative at the
4 Louisville Auto Auction, Manheim Louisville, and
5 he was there, and Scott and I, we just was talking,
6 and asked if I'd be interested, and I looked -- he
7 had a brochure, and I looked it over.

8 Q. And what was attractive about that offer?

9 A. Just the available money.

10 Q. Do you recall whether the fees and
11 interest were higher, lower than AFC?

12 A. Comparable at the time.

13 Q. And how about MAFS, how did they
14 compare to MAFS?

15 A. Comparable.

16 Q. Okay. So it was primarily having more
17 credit that attracted you?

18 A. Yes.

19 Q. Okay. And who was it -- do you remember
20 the name of that representative?

21 A. Yes. It's Mark Holley.

22 Q. Okay. Do you recall anything more
23 specific about what Mark Holley said to you in that
24 initial meeting?

25 A. Nothing. Just basically over the terms

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1 and the -- the -- how much credit available,
2 interest rate. That was pretty much it.

3 Q. Okay. Was there any specific discussion
4 about how interest would be calculated?

5 A. I think it was in the -- in the brochure or
6 maybe what I signed. It was a percentage plus
7 prime with the prime subject to change.

8 Q. Was there any specific discussion about
9 when interest would begin to run?

10 A. No.

11 Q. And so did you meet with anybody else
12 from DSC before you signed up with DSC?

13 A. No.

14 Q. Did you take the loan forms at that point
15 or just a brochure?

16 A. First meeting was a brochure, and the
17 second he had the forms, and then I signed them.

18 Q. Okay. So you signed them physically
19 present with Mark Holley?

20 A. Yes.

21 Q. Okay. So your interrogatories say you
22 worked with Mark Holley, Lourdes Givens, and two
23 other reps of NextGear at different times.

24 A. Yes.

25 Q. Does that sound true?

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1 A. Yes.

2 Q. Okay. And do -- you don't remember the
3 names of the two --

4 A. Well, I do -- after all this, we found a
5 name -- I -- I couldn't think of his name. One of
6 the gentleman's name for NextGear was Art -- Art
7 Felix.

8 Q. Art Felix.

9 A. Art Felix.

10 Q. You don't remember the fourth person?

11 A. No. I think her name -- no, no. She
12 was -- the situation was Mark Holley got sick.
13 They had a couple reps in between there, and then
14 Lourdes Givens was the -- took over.

15 Q. Okay. So these were -- from your
16 perspective anyway, these were NextGear -- I'm
17 sorry, DSC's reps at Manheim Louisville?

18 A. Yes.

19 Q. Okay. Besides those reps at Manheim
20 Louisville, did you interact with anybody else from
21 DSC?

22 A. No. No. They -- they would travel to
23 different auctions, as well.

24 Q. Okay. Do you recall who you interacted
25 with from MAFS?

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1 A. Donna Kronauer. Is that how -- I don't
2 know how you pronounce that.

3 MS. LASKY: Kronauer.

4 A. Kronauer. Sorry.

5 BY MR. MCCARTER:

6 Q. Okay.

7 A. Excuse me. Kronauer. She was the rep
8 for MAFS.

9 Q. Okay. I don't think we've seen it in the
10 production, but you don't have the original
11 brochure from DSC that you looked at?

12 A. No.

13 Q. Okay. And so I'm sorry if this is
14 repetitive, but you -- did you interact with DSC at
15 any other auction?

16 A. Yes.

17 Q. Which one?

18 A. Both the representatives, Mark Holley,
19 Lourdes Givens, Art Felix would go to -- I would
20 see them at Louisville, Bowling Green, and
21 Evansville, which would be Wolfes.

22 Q. Okay. And so it sounds like they kind of
23 worked that region, that circuit?

24 A. Yes.

25 Q. Okay. All right. Number 4.

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1 A. 4.

2 Q. I'm going to show you what we're going to
3 call Defendants' Exhibit 4, and I'll represent for
4 the record that this is a composite exhibit. It
5 starts with NextGear 003432, but it has various
6 other Bate's numbers included that go through
7 NextGear 003392. They're not all sequential.

8 So again, take as much time as you want, but
9 I'll call your attention to specific questions. I'm
10 not going to ask you to recite the whole document.

11 A. Okay. I'm just going to read that.
12 [examines document]

13 Q. Okay. So Exhibit 4, does this generally
14 look like an application from you to DSC, as well
15 as some other loan agreements you signed with
16 DSC?

17 A. Yes.

18 Q. Okay. And on that first page that's
19 numbered 3432 at the bottom, NextGear 00 --

20 A. Yes.

21 Q. -- 3432, that is your signature?

22 A. Yes.

23 Q. And it's -- it's dated October of --
24 of 2006; do you see that?

25 A. Yes.

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1 Q. Okay. So do you think this is your first
2 application --

3 A. I believe so.

4 Q. -- with DSC?

5 A. Sorry. I believe so; yes.

6 Q. And at the time, everything on here was
7 true, to the best of your knowledge?

8 A. Yes.

9 Q. Okay. And if you flip over to the second
10 page, it's labeled NextGear 003378; do you see
11 that?

12 A. Yes.

13 Q. It looks like some sort of follow-up
14 application or -- that's dated November 2nd, 2006;
15 do you see that?

16 A. Yes.

17 Q. Do you recall signing that?

18 A. Not -- no.

19 Q. Let me ask you: Is that your signature?

20 A. Yes.

21 Q. Okay.

22 A. Yes.

23 Q. And again, you know, this was true, to the
24 best of your knowledge, at the time?

25 A. Yes.

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1 Q. Okay. And so then, if we go to the third
2 page of that exhibit that starts at 3379, do you see
3 that?

4 A. Yes.

5 Q. That looks like a promissory note you
6 signed with DSC on October -- in October of 2006?

7 A. Yes.

8 Q. And your signature -- that is your
9 signature on 3384?

10 A. Yes.

11 Q. Okay. And then the next page, 3385, it's
12 a term sheet dated October 30th, 2006, again, with
13 your signature?

14 A. Yes.

15 Q. Okay. And the next few pages, there's a
16 power of attorney, a -- an individual guarantee, an
17 incumbency certificate, corporate resolutions, and
18 then an understanding page. Are all those your
19 signature on those pages?

20 A. Yes.

21 Q. And these documents are generally dated
22 in October and November of 2006. So does this
23 look like generally the first batch of documents
24 you signed with DSC?

25 A. Yes.

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1 Q. Okay. Just calling your attention back to
2 the middle, it's labeled 3385, and it's called a
3 term sheet.

4 A. Yes.

5 Q. All right. In that document, you see
6 about four lines down it says program type is
7 retail; do you see that?

8 A. Okay. Yes.

9 Q. Yeah. Does that mean anything to you?

10 A. No.

11 Q. Okay. If you go on down to the middle of
12 that document, it says [reads] Period: The initial
13 term for an Advance under this Note shall be 30
14 days and shall mature at that time. All extensions
15 allowed for the same event shall not -- shall be not
16 more than 30 days. Do you see that?

17 A. Yes.

18 Q. And then below that, it says, "Extensions:
19 The number of Extensions allowed shall be 2."

20 A. Yes.

21 Q. Does that refresh your memory about, you
22 know, when a car payment would be due and how
23 many times you could extend it?

24 A. Yes.

25 Q. Okay. And is -- is that accurate? You

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1 had 30 days to pay it, but you could extend it
2 twice?

3 A. Yes.

4 Q. Okay. And of course, if you sold it before
5 that, you'd have to pay it off; right?

6 A. Yes.

7 Q. Okay. Okay. All right. Show you a
8 couple more documents. We're on Number 6, I
9 think.

10 MS. LASKY: Number 5.

11 MR. MCCARTER: Number 5; okay.

12 THE WITNESS: I have two 4s.

13 MS. LASKY: Oh.

14 MR. MCCARTER: Uh-oh.

15 THE WITNESS: Let me see what we've
16 got here. This is 1.

17 MR. MCCARTER: Let's go off the record
18 for a second.

19 [WHEREUPON, a brief recess is taken.]

20 [WHEREUPON, document referred to is marked
21 Defendants' Exhibit 5 for identification.]

22 BY MR. MCCARTER:

23 Q. Okay. Mr. Mattingly, did my error that
24 the exhibit we just talked about that contained the
25 application and initial batch of loan documents will

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1 be labeled Exhibit Number 5; do you see that?

2 A. Yes.

3 Q. And you agree with that?

4 A. Yes.

5 Q. Okay. And so now I'm going to show you
6 the next exhibit, which we're going to call Exhibit
7 Number 6.

8 [WHEREUPON, document referred to is marked
9 Defendants' Exhibit 6 for identification.]

10 BY MR. MCCARTER:

11 Q. And again, this is a composite exhibit
12 with different term sheets in it, and some of them
13 were produced by you, and some of them were
14 produced by NextGear; do you see those?

15 A. Yes.

16 Q. And is it accurate to say that each of
17 those have your signature on them?

18 A. Yes.

19 Q. Okay. And do you have any reason to
20 doubt that these are the term sheets that applied
21 to your DSC line of credit at -- at the dates
22 indicated on these term sheets?

23 A. Yes.

24 Q. You have a reason to doubt that?

25 A. Oh, I'm sorry. Yes, they are correct.

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1 Q. Okay.

2 A. Sorry.

3 Q. Just because I asked the question
4 backwards. These are term sheets you signed with
5 DSC that controlled at the time they say they
6 controlled?

7 A. Yes.

8 MS. LASKY: Objection to the form.

9 A. Yeah, they look to be accurate.

10 BY MR. MCCARTER:

11 Q. Okay. I'm going to show you what we're
12 going to call Defendants' Exhibit 7.

13 [WHEREUPON, document referred to is marked
14 Defendants' Exhibit 7 for identification.]

15 BY MR. MCCARTER:

16 Q. Again, this is another composite exhibit
17 that starts with NextGear 3394, but it has some
18 documents that you produced and some that we
19 produced. It includes a power of attorney, indiv --
20 individual personal guarantee, and a few other
21 documents.

22 I just wanted you to confirm that those are
23 your signatures again.

24 A. Yes.

25 Q. Okay. I'm going to show you what we're

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1 going to call Exhibit 8.

2 [WHEREUPON, document referred to is marked
3 Defendants' Exhibit 8 for identification.]

4 BY MR. MCCARTER:

5 Q. This document, it's Bate's labeled
6 MA 000022 through MA 34. Do you see that at the
7 bottom?

8 A. Yes.

9 Q. Okay. And this looks like a promissory
10 note that you signed with DSC in February, on
11 February 5th, 2009; does that look accurate to you?
12 You can look at Page 30.

13 A. Yes.

14 Q. Okay. And Page 31 has a power of
15 attorney?

16 A. Yes.

17 Q. And Page 33 is a term sheet?

18 A. Yes.

19 Q. And again, those are your signatures on
20 the power of attorney and the term sheet?

21 A. Yes.

22 Q. All right. And then Page 34 is a credit
23 limit amendment to demand promissory note and
24 security agreement; do you see that?

25 A. Yes.



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1 Q. And that's your signature?

2 A. Yes.

3 Q. Okay. I mean, this generally looks like a
4 batch of loan documents you signed in October
5 of 2011; does that look right?

6 A. Yes.

7 Q. Do you believe this is the last set of loan
8 documents you signed with DSC?

9 A. Yes.

10 Q. Okay. And there are handwritten notes
11 on this document, and I'll represent to you that
12 this document was produced by you to us. Do you
13 know whose handwriting that is?

14 A. You know what, no, I don't.

15 Q. Okay. Is it yours?

16 A. No.

17 Q. Would you recognize it if it was your
18 wife's?

19 A. Yes.

20 Q. Is it hers?

21 A. Oh, no.

22 Q. Okay.

23 A. Way not neat enough.

24 Q. Do you recall whether the handwriting
25 was on there when you produced it to your

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1 attorney?

2 A. No, I don't.

3 Q. Okay. So these loan documents we just
4 looked at, Exhibits 6, 7, 8, was it your
5 understanding they governed the legal terms of
6 your arrangement with DSC?

7 A. Yes.

8 Q. Okay. Are you aware of any other legal
9 agreements that you had with DSC besides the
10 ones we've looked at?

11 A. No.

12 Q. And you know, we talked about this
13 generically with floor plans earlier, but was your
14 understanding that in exchange for DSC's money
15 you would have to pay that money back plus
16 interest and fees?

17 A. Yes.

18 Q. Okay. And you understood they had a
19 security interest in your cars to secure payment?

20 A. Yes.

21 Q. Okay. Did you always pay DSC by ACH?

22 A. I think at first Mark Holley would come
23 down to auctions if I called him early before -- I
24 think even before they had their website, I could
25 call him and tell him that I was going to be at the

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1 auction, need to pay off a particular vehicle, and I
2 would give him a check. He worked out of
3 Lexington.

4 Q. And he'd hand you the title?

5 A. He'd hand me the title, and I'd hand him
6 the check.

7 Q. Okay. And I should have asked this
8 before, but that would generally mean that DSC
9 would hold the titles after you floored the car with
10 them until they were paid?

11 A. Yes.

12 Q. And is that true of other floor plans?

13 A. Yes.

14 Q. Okay. And that's sort of part of their
15 security to make sure they get paid?

16 A. Yes.

17 Q. Do you -- do you have any knowledge of
18 while they were holding those titles whose name
19 the vehicle be titled in?

20 MS. LASKY: Object to the --

21 A. No.

22 MS. LASKY: -- form.

23 A. No.

24 BY MR. MCCARTER:

25 Q. During that period you were with

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1 DSC, 2006 to 2012, how did you keep your books
2 internally at Mattingly, if any?

3 A. Well, I would -- I don't know that I
4 understand the question.

5 Q. Okay. So presumably, you keep some
6 accounting record of some sort of what you paid
7 for a car, how much you sell it for, that sort of
8 thing?

9 A. Yes. We'd have something from --
10 familiar -- we called it the manilla -- the binders,
11 and we have ve -- all the -- everything related to
12 that car in that particular binder.

13 Q. Okay. Is that --

14 A. Auction ticket.

15 Q. Have you heard the term deal jacket? Is
16 it kind of the same thing?

17 A. Yeah, jacket. A jacket; yes.

18 Q. Okay.

19 A. Thank you for that term. I knew it, but I
20 just couldn't -- it was on the tip of my tongue.

21 Q. No problem. But at some point when
22 you've got to file your taxes, I guess, you've got
23 to translate that to profit or loss; right?

24 A. Correct.

25 Q. How do you do that?

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1 A. Well, we just -- we -- actually, my wife
2 puts them into the computer --

3 Q. Uh-huh.

4 A. -- and we just calculate every one of them
5 at -- at the end of the day when it was sold. We
6 knew on that vehicle what the profit or loss was.

7 Q. Okay. Do you know during 2006, 2012,
8 were you using a particular software to do that?

9 A. No, I don't -- I don't know.

10 Q. You may have been, you just don't know?

11 A. Yeah. There was something, but I don't
12 know what it would be.

13 Q. Okay. But as -- as far as you know, you
14 didn't attempt to track how much interest and fees
15 would be due to NextGear during that period? You
16 just looked at their online statement for that?

17 A. Yes. And we could do it the end of the
18 year statement, as well. There was an end of the
19 year statement they could pull.

20 Q. From NextGear?

21 A. From NextGear.

22 Q. Okay. And when I say NextGear in those
23 last two questions, we're talking about DSC; right?

24 A. DSC; yes.

25 Q. Okay. So we talked about, you know,

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1 your initial discussion with Mark Holley, and you
2 said there was no specific discussion about the
3 timing of interest, when it would start accruing;
4 right?

5 A. Correct.

6 Q. Did you ever talk about that issue with
7 anybody at DSC?

8 A. Possibly. I -- I just don't remember.

9 Q. As we sit here today, you don't remember
10 any specific conversations with anybody at DSC
11 about when DSC would start charging interest?

12 A. Well, occasionally, they -- if I was --
13 can -- can I give you an example?

14 Q. Yeah.

15 A. If I bought a car today, and let's say I
16 sold it next week, and I paid it off online, there
17 would -- and I -- and when they -- when I check,
18 there's no title available. So they basically didn't
19 have the title yet, but yet I was still paying the
20 interest, and they didn't even have the title.

21 So I would have to wait until they got the title
22 to send to me. Other than that, that would be
23 about the only thing.

24 Q. But did you -- do you remember talking to
25 somebody at NextGear about that?

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1 A. Yes.

2 Q. And who was that?

3 A. That would be both Mark Holley, as well
4 as -- mostly, Lourdes Givens.

5 Q. Okay. And what did you say to them
6 about it?

7 A. Just in a -- I said in a jokingly -- I'm sure
8 that they told me it was common practice, but I
9 said, "That's kind of a shame that I'm paying
10 interest on something that you-all are still holding
11 the money on that I don't even have yet."

12 Q. M-hm. But do you remember any specific
13 discussions with anybody at DSC about when
14 interest would start accruing on your floor plan
15 cars in the first place?

16 A. Other than --

17 MS. LASKY: Object to the form.

18 A. Other than that, no.

19 BY MR. MCCARTER:

20 Q. Okay. All right. I'm going to show what
21 we're going to call Defendants' Exhibit 9.

22 [WHEREUPON, document referred to is marked
23 Defendants' Exhibit 9 for identification.]

24 BY MR. MCCARTER:

25 Q. This document is Bate's labeled MA 252

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1 through 283. Do you see that at the bottom? You
2 see those numbers --

3 A. Yes.

4 Q. -- right?

5 A. I'm sorry.

6 Q. 252 --

7 A. Yes. Yes. I'm sorry.

8 Q. No problem. And I'll represent to you
9 that MA generally means it's a document that you
10 produced to us. So is -- do you recognize this
11 document?

12 A. Yes. It looks like a sheet; yes.

13 Q. Does it -- well, it -- it starts with
14 Manheim Automotive Financial Services, Inc.
15 Security Agreement, Inventory Financing bridge
16 Line of Credit; do you see that?

17 A. Yes.

18 Q. All right. Is it fair to say this is
19 generally the loan agreements you signed with
20 MAFS in -- in July of 2010?

21 A. Yes. It looks like the typical -- typical
22 thing; yes.

23 Q. Okay. And those are your signatures
24 internally, like, for example, on 2 -- Page 272
25 and 275?

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1 A. Yes.

2 Q. Okay. And that's your signature on 279?

3 A. Yes.

4 Q. And 283?

5 A. Yes.

6 Q. Okay. So, after July 2010, this would
7 generally be the loan agreements that would
8 govern your floor plan with MAFS?

9 A. Yes.

10 Q. Okay.

11 MR. MCCARTER: What number are we
12 on?

13 THE WITNESS: Number 10 will be the
14 next one.

15 [WHEREUPON, document referred to is marked
16 Defendants' Exhibit 10 for identification.]

17 BY MR. MCCARTER:

18 Q. All right. I'm going to show you what
19 we're going to call Defendant's Exhibit 10. This is
20 Bate's labeled MA 242 through 244. This is called
21 "MAFS Floor Plan Guideline"; do you see that?

22 A. Yes.

23 Q. And is that your signature on the second
24 page?

25 A. Yes.



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1 Q. Okay. So these are generally guidelines
2 for the MAFS line around the time you signed this?

3 A. Yes.

4 Q. Okay. And at a high level do you
5 understand that part of your complaint in this case
6 relates to when interest began accruing on your
7 DSC line?

8 A. Yeah.

9 Q. Okay. Can you give me your
10 understanding of what your concern is?

11 A. I believe they were -- basically when I
12 bought a car title attached or title absent, it
13 appears that they were writing -- charging me
14 interest from Day 1, and MAFS was even charging
15 me interest, two -- two days worth of interest the
16 day I put it on the floor plan.

17 Q. So on the DSC side, is your only concern
18 the cars that were sold title absent?

19 MS. LASKY: Object to the form.

20 A. Possibly. I believe so.

21 BY MR. MCCARTER:

22 Q. Okay. So if the title is present on the
23 day of the auction, you believe it would be
24 appropriate for DSC to start charging interest from
25 that day?

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1 A. Yes.

2 Q. Okay. And on MAFS, you believe it would
3 be appropriate for MAFS to start charging interest
4 from the day of sale if title was present?

5 A. Yes.

6 Q. Okay. Do you believe your MAFS line of
7 credit and your MAFS documents are at issue in
8 this case?

9 A. I'm sorry. Repeat that.

10 Q. Do you believe your MAFS line of credit
11 separate from your DSC --

12 A. M-hm.

13 Q. -- line of credit is at issue in this case?

14 A. Possibly; yes.

15 Q. So on the -- step back to the cars that
16 were sold title absent. So if you bought a title
17 absent car and you put it on your DSC line, your
18 position is that interest would start being charged
19 from the day of sale?

20 A. Correct.

21 MS. LASKY: Object to the form.

22 BY MR. MCCARTER:

23 Q. Okay. And is it your position that you
24 think it was only appropriate to charge it once title
25 was present?

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1 A. Yes.

2 Q. But in that period between when you
3 purchased it and when the title showed up, where
4 was the car?

5 A. Usually at my lot unless I had it sold.

6 Q. And so you would be able to go ahead and
7 take the car that day from auction, you just
8 wouldn't have the title until later?

9 A. Yes.

10 Q. Okay. And is it -- do you have a -- strike
11 that.

12 You'd said earlier that you -- you'd always
13 have to make some part of payment or arrangement
14 for payment with the auction to take the car; right?

15 A. Yes.

16 Q. Do you believe the auction would have let
17 you take the car sold title absent without you
18 putting it on the DSC line?

19 A. I could --

20 MS. LASKY: Object to the form.

21 A. I'm not sure if I understand the question.
22 I couldn't leave the auction until that car was
23 signed for by either paid for or by -- if it was a
24 floor plan, somebody has to initial it and scan it
25 in.

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1 BY MR. MCCARTER:

2 Q. Okay. But you were able to take the cars
3 put on the DSC line because you told the auction
4 you were putting on the DSC line?

5 A. Yes.

6 Q. Okay. And that's true whether the title is
7 present or not?

8 A. Yes.

9 Q. Okay. Let me show what you we're going
10 to call Exhibit 11.

11 [WHEREUPON, document referred to is marked
12 Defendants' Exhibit 11 for identification.]

13 BY MR. MCCARTER:

14 Q. And this document is Bate's labeled
15 MA 306 through 309. So this was produced to
16 you -- I mean, by you to us in this case. Do you
17 recognize this document?

18 A. Yes. It looks like a dealer statement
19 document from DSC.

20 Q. Okay. And if you -- you can see it was
21 printed on -- on -- in the -- I guess, let's see, this
22 is the second page of the exhibit. You can see a
23 printed date of Monday, January 11th, 2010 at 4:45
24 p.m.; do you see that?

25 A. Yes.

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1 Q. And then it -- it's got a start date of -- on
2 the left-hand side from January 1st, 2009 through
3 December 31st, 2009; do you see that?

4 A. Yes.

5 Q. Would this be that sort of year end
6 statement you were talking about?

7 A. Yes. Yes. Yeah. Correct.

8 Q. And so is this something you could go
9 online and get from DSC and then print on your
10 end?

11 A. Yes.

12 Q. Okay. It looks like there's a fax line at
13 the top of the document on each page; do you see
14 that?

15 A. Where -- if you could point it out to me?

16 Q. Yeah.

17 MS. LASKY: This.

18 BY MR. MCCARTER:

19 Q. Right there.

20 A. Oh, okay. Yes. I'm sorry.

21 Q. Do you --

22 A. Yes.

23 Q. -- see that?

24 A. Yes.

25 Q. And it -- it shows a fax date of

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1 January 11th, 2010, and it's got a fax number, and
2 then it says "Dealer Services Corporation." Do
3 you read that as a document faxed to you by DSC
4 or from you to DSC?

5 A. From DSC to us.

6 Q. Okay. Yet -- I mean, I know you -- you
7 probably don't remember, but do you have any
8 reason to doubt it was faxed to you by DSC on
9 January 11th, 2010?

10 A. No, I don't.

11 Q. Okay. And do you read this sort of as all
12 the cars financed during that period and the total
13 due and paid on those?

14 MS. LASKY: Object to the form.

15 A. It appears so, as well as where it also
16 has collateral audits, as well.

17 BY MR. MCCARTER:

18 Q. Okay. The top of Page 2?

19 A. Yes, it does, and I -- apparently, I missed
20 something here. It appears that they charged me
21 two lot audits in the same month. I must have
22 missed that.

23 Q. Okay. And you didn't have two lots?

24 A. No. It looks like they charged me on
25 the 22nd, and another 75 on the 23rd.

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1 Q. Okay. What is a collateral audit?

2 A. It's -- it's where they come and check the
3 inventory of your cars to make sure that they're
4 there or where they're at and there's -- that kind
5 of thing.

6 Q. Okay. And that's -- that's sort of a
7 routine thing that you agreed they could do?

8 A. Yes.

9 Q. Okay. And you -- you produced this to
10 us. Do you have any recollection of where you
11 would have found this or where you would have
12 kept it?

13 A. It would have been -- well, at the time,
14 we would have had it in our records, but it -- we
15 would have got it offline at DCS's website.

16 Q. Okay. Well, and we talked a minute ago
17 that maybe it was faxed to you by DSC?

18 A. Yes. I -- I would say the year end
19 statement was probably faxed to us. They --
20 because we probably had to call -- they would
21 probably only do up to date what was current on --
22 online.

23 Q. Okay.

24 A. So we'd have to get a current, like, an up
25 to date thing for taxes.

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1 Q. Okay. And actually, you know, I -- I
2 didn't see this a minute ago, but it -- how many
3 pages are in your document? I'm sorry.

4 A. I go all the way up to 4245. I'm sorry.
5 Or 4 -- 452. I'm sorry. Looks like there's -- it's a
6 four-page -- four pages.

7 Q. Okay. And so, actually, if -- it looks like,
8 again, it's a composite exhibit. If you -- if you go
9 back a couple of pages and there's MA 310 --

10 A. Yeah.

11 Q. -- and it looks like a fax cover sheet that
12 probably went with the statement that we just
13 looked at that's on 307, 308.

14 A. M-hm.

15 MS. LASKY: I'm sorry. What -- is the
16 question --

17 A. You'll have to repeat --

18 MS. LASKY: -- whether --

19 A. -- the question.

20 BY MR. MCCARTER:

21 Q. Yeah. And -- and I don't want to get
22 bogged down on this, but it looks like maybe it was
23 produced -- maybe produced out of order. Looks
24 like 310, Page 310 might be the fax cover sheet
25 for 307 and -- through 309, because it's got the

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1 same date, it's got the fax number.

2 A. Yes, that's possible.

3 Q. Okay. And -- no, let me step back. 310
4 looks like it might be a request from Ms. Mattingly
5 to fax the interest paid in 2009; do you see that?

6 A. Yes.

7 Q. Okay. And so maybe this statement is
8 what was faxed back?

9 A. Yes.

10 Q. Okay. All right. So let's move on in that
11 same exhibit to Page 361. It's the next page after
12 the cover sheet; do you see that?

13 A. Yes.

14 Q. Again, this was produced by you to us.
15 Do you know what this is?

16 A. No, I don't.

17 Q. Does it look like -- I mean, I see AFC in
18 the upper left-hand corner; do you see that?

19 A. Yeah. This is something from AFC,
20 apparently.

21 Q. Okay.

22 A. So you produced it to us, but it may not
23 have anything to do with DSC?

24 A. No.

25 Q. Okay. All right. Now, if we go on to

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1 Page 452 and 453, it's the last two pages in that
2 exhibit; do you see that?

3 A. Yes.

4 Q. And this document looks like it's called
5 "Receivable Detail Report"?

6 A. Yes.

7 Q. And it's got a date of 5/23/2012?

8 A. Yes.

9 Q. Do you have any sense of what this is and
10 what it shows?

11 A. This is --

12 MS. LASKY: Object to the form.

13 A. This is the final -- this is the final cars
14 that we had with DSC.

15 BY MR. MCCARTER:

16 Q. Okay. And you -- you had possession of
17 this. Do you recall how you got possession of it?

18 A. I'm sure it was off the website.

19 Q. Okay. You know, it shows 120,311.28
20 outstanding at that point. Do you see in the
21 middle?

22 A. Yes.

23 Q. Do you -- do you know whether Mattingly
24 ever paid that to DSC?

25 MS. LASKY: Object to the form.

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1 A. No.

2 BY MR. MCCARTER:

3 Q. No, you didn't pay it?

4 A. Did not; no.

5 Q. Okay. And however -- why did you not
6 pay it?

7 A. Excuse me?

8 Q. Why did you not pay that?

9 A. These cars were involved in the
10 repossession. Some of them were. Some of them
11 were already paid off or sold. Sorry. Sold.

12 Q. And so do you have some recollection
13 that some cars were resold and reduced that
14 amount?

15 A. We had -- we had actually -- several of
16 these cars were ours that we paid off ourselves,
17 and some of them went to repossession.

18 Q. Okay. Do you recall whether there was a
19 deficiency on the repossessed cars?

20 A. Yes.

21 Q. And was that paid?

22 A. No.

23 Q. Okay. All right. At some point, I think
24 you said this already, DSC declared a default and
25 picked up cars?

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1 A. Yes.

2 Q. Okay. And what's your recollection of --
3 of when that happened?

4 A. May the 9th of 2012.

5 Q. Okay. Do you recall any discussions with
6 DSC at the time about why they did that?

7 A. No, they did not. No reason.

8 Q. No reason. Did -- did you have any
9 problems with MAFS around the same time?

10 A. No.

11 Q. No. Did MAFS ever declare default?

12 A. Yes, at the same -- they did it at the
13 same time.

14 Q. Did they pick up cars?

15 A. Yes.

16 Q. Okay.

17 A. No. I -- no. I only took one back to
18 them.

19 Q. Okay. So you voluntarily returned one to
20 MAFS after they declared a default?

21 A. Yes, involuntarily [phonetic]. The
22 remainder of DCS, as well.

23 Q. So DSC picked up some cars
24 involuntarily, you returned others?

25 A. Yes.

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1 Q. Okay. And both of those things happened
2 in May of 2012?

3 A. Yes.

4 Q. Okay. Did you have any -- do you recall
5 whether the AFC line was still out -- or still
6 existing at that time?

7 A. It was not.

8 Q. Was not; okay. Did you have any other
9 sources of inventory credit at the time?

10 A. No.

11 Q. Okay. Had you heard anything from the
12 police, the -- the state police you talked about
13 before, before DSC declared its default?

14 A. No.

15 Q. Just as a general matter apart from DSC,
16 would you ever floor the same car more than once?

17 MS. LASKY: Object to the form.

18 A. Possibly.

19 BY MR. MCCARTER:

20 Q. Okay. In what circumstances would you
21 do that?

22 A. If it was in my -- it was my name, I would
23 floor it for -- use the money.

24 Q. You would floor it and use the money?

25 A. Yeah. Floor it, and -- and they would

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1 pay -- give me -- send me a check or whatever.

2 Q. So if -- was there ever a situation where
3 you bought it at auction, put it on a floor plan, and
4 then, at some point, you re-floored the same car
5 with another --

6 A. Yes.

7 Q. -- company? When would that happen?

8 A. If it ran over in time, and generally it was
9 done by Donna, or Lourdes would do it for me.

10 Q. Okay. And how did they value the car at
11 that time? How much -- how did they value how
12 much to finance at that time?

13 A. I --

14 MS. LASKY: Object to the form.

15 A. They would -- I guess they would use a --
16 they had a chart, or they had the auction ticket
17 where I purchased it.

18 BY MR. MCCARTER:

19 Q. Okay. Did you ever use the original
20 auction ticket to floor it a second time?

21 MS. LASKY: Object to the form.

22 A. No. No, I don't believe so. Unless it
23 was -- unless Donna changed the -- I think one
24 instance I just saw some of the paperwork where
25 Donna changed it from MAFS to DSC.

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1 BY MR. MCCARTER:

2 Q. Did you ever sell a car at auction or
3 online, like on -- you know OVE, Online Vehicle
4 Exchange?

5 A. M-hm.

6 Q. Okay. Did you ever sell a car at an
7 auction or on OVE to another dealer at a
8 pre-arranged price?

9 MS. LASKY: Object to the form.

10 A. No.

11 BY MR. MCCARTER:

12 Q. Did you ever buy a car at an auction or on
13 OVE from another dealer at a pre-arranged price?

14 A. Yes.

15 Q. Okay. When would that happen?

16 A. I -- I don't recall dates.

17 Q. And then did you ever put that car, those
18 cars on the floor plan?

19 A. Yes.

20 Q. With DSC?

21 A. Yes.

22 Q. Do you -- do you think that's proper to
23 finance a car like that with a floor plan?

24 MS. LASKY: Object to the form.

25 A. It would have to be, because they did it

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1 for me.

2 BY MR. MCCARTER:

3 Q. Okay. But in that situation, you're using
4 a pre-arranged non-auction price, and you're
5 representing to a floor planner that that's the
6 auction price; right?

7 MS. LASKY: Object to the form.

8 A. I'm not sure of your question, but I can
9 say that -- they would have to be a certain -- the --
10 the vehicle price would have to meet certain
11 guidelines, and that would be set by Donna, and
12 Lourdes would know that.

13 BY MR. MCCARTER:

14 Q. Okay. But if they're -- if they're typically
15 financing the auction price and relying on the
16 auction to set the value and you've preset that
17 value with a dealer unbeknownst to the floor
18 planner, would that be a misrepresentation to the
19 floor planner?

20 MS. LASKY: Object to the form.

21 A. No, because they -- they -- they wouldn't
22 allow an overpriced car on the floor plan.

23 BY MR. MCCARTER:

24 Q. Okay. How do you -- how do you know
25 that? How do you know what DSC would finance?

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1 A. Well, they'd have a -- they have
2 guidelines. I -- I don't know their -- what they call
3 it. Manheim has an MMR. It's an average market
4 price of a vehicle.

5 Q. Do you know for a fact that DSC used
6 that?

7 A. No, I don't. I'm -- I'm not sure what they
8 used.

9 Q. Okay. How often do you think that
10 happened where you would sell a car at an auction
11 on -- I'm sorry, buy a car at auction on an OVE at
12 a pre-arranged price?

13 A. Oh, I --

14 MS. LASKY: Object to the form.

15 A. I don't have a number. I don't have --
16 wouldn't have a number for you.

17 BY MR. MCCARTER:

18 Q. More than ten?

19 A. I'd say -- oh, yeah, possibly. Ten or so.

20 Q. Ten or so?

21 A. M-hm.

22 Q. Okay. Did you ever -- while you were
23 with DSC, did you ever obtain duplicate titles?

24 A. No.

25 Q. Never?

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1 A. No.

2 Q. Okay. Do -- do you have an
3 understanding what title washing is?

4 A. No.

5 Q. Okay. Did you ever apply for or obtain a
6 title that removed an owner or a lienholder from
7 the titles without having paid off that owner or
8 lienholder?

9 MS. LASKY: Object to the form.

10 A. No.

11 BY MR. MCCARTER:

12 Q. Okay. During these de -- the default time
13 frame with DSC, did you close your line with them,
14 or did they close it?

15 A. I guess they closed it, because they cut
16 us off with them a couple of weeks after that.
17 That -- that printout you had was for our last
18 statement.

19 Q. Okay. Did they leave you on sale only for
20 a little bit?

21 A. No.

22 Q. Okay. What about MAFS, did you close
23 that, or did MAFS close it?

24 A. Once we defaulted, I guess we both
25 closed it. I -- there was no arrangement. I just

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1 was barred from the auction.

2 Q. Okay. You said you were barred from the
3 auction. Which auction are you talking about?

4 A. Manheim.

5 Q. Okay. And you had an understanding
6 prior to 2012 that MAFS was affiliated with
7 Manheim?

8 A. Yes.

9 Q. And was it your understanding that prior
10 to 2012 MAFS and DSC were not affiliated?

11 A. Yes.

12 Q. And so DSC was not affiliated with
13 Manheim?

14 A. Yes, I believe so.

15 Q. Okay. So, prior to 2012, did you have
16 an understanding that DSC and MAFS were
17 competitors?

18 A. Yes.

19 Q. Okay. Do you know whether DSC was
20 affiliated, like, connected by corporate ownership
21 with any particular auction company?

22 A. No, I wouldn't have any idea.

23 Q. Okay. So around the time that DSC
24 declared its default, do you remember whether
25 they did a lot audit?

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1 A. They did a lot audit; yes. Yes.

2 Q. Okay. And did they find cars not
3 present?

4 A. Yes. Well, they found all cars, but
5 they -- some of them were at different places in
6 town, and I took them to all those.

7 Q. But that -- that happened over the next
8 few days; right?

9 A. It was prior, prior to the repossession.

10 Q. Okay. So they did a lot audit, not all
11 cars were on your lot; right?

12 A. Basically, yes.

13 Q. And over the next few days, you helped
14 them locate each of those cars?

15 A. No, no. The same day.

16 Q. Same day; okay. And where were the
17 other cars?

18 A. One was in a garage, and the other one
19 was at a salesman's house.

20 Q. What were they doing there?

21 A. One was just in a garage because it was
22 a BMW, and the other one was --

23 THE REPORTER: I'm sorry. It was being
24 what?

25 THE WITNESS: It was a BMW.

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1 THE REPORTER: Thank you.

2 THE WITNESS: Sorry.

3 A. And the other was -- the guy was driving
4 it.

5 BY MR. MCCARTER:

6 Q. Did you have any understanding that the
7 inventory was supposed to remain on your lot until
8 it was sold?

9 A. No.

10 Q. Were any of the cars out with retail
11 customers when MAFS was -- I'm sorry, when DSC
12 was looking for them?

13 A. Yes, there was one. One.

14 Q. Had it been sold?

15 A. It had been sold and waiting to transfer.

16 Q. When you say waiting to transfer, does
17 that mean to provide title to the buyer?

18 A. Yes. To transfer it because they had
19 already paid for it, and it was. . .

20 Q. And you didn't have the title yet because
21 you hadn't paid DSC for it?

22 A. Right.

23 Q. Okay. Do you recall at all the gap in time
24 there as -- between when you sold it to the retail
25 customer versus when DSC came looking for it?

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1 A. No, I don't. I don't remember the exact
2 dates and times, but I -- I know who I sold it to
3 and -- a good friend of mine.

4 Q. Okay. Was it beyond the -- the 24-hour
5 period you had to pay DSC?

6 MS. LASKY: Object to the form.

7 A. Yes, because I was holding a check for a
8 customer.

9 BY MR. MCCARTER:

10 Q. Okay. So at that point, you had sold a
11 car retail, and you hadn't paid DSC for it within
12 the required time frame?

13 MS. LASKY: Object to the form.

14 A. Right.

15 BY MR. MCCARTER:

16 Q. Okay. Have you ever signed a title for
17 someone else that you provided to DSC for floor
18 planning?

19 MS. LASKY: Object to the form.

20 A. I -- I don't understand the question about
21 what you're --

22 BY MR. MCCARTER:

23 Q. Have you ever signed anyone else's name
24 to a -- the title to a vehicle you put on the DSC
25 floor plan?

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1 A. Not that I recall; hm-m.

2 Q. And have you ever duplicated a title to a
3 vehicle that you put on the DSC floor plan?

4 A. Duplicated? No. I had original titles.

5 Q. And by duplicating, we understand that
6 that means going to the state to get another title;
7 right?

8 A. Unless it was put in Mattingly Auto Sales'
9 name, if that's what you're talking about.

10 Q. So I just want to make sure you -- you
11 didn't -- you never got a duplicate title from the
12 state on a car that you had already put on the DSC
13 floor plan?

14 MS. LASKY: Object to the form.

15 A. I don't -- I don't know.

16 BY MR. MCCARTER:

17 Q. You don't have any --

18 A. That one I would not -- I don't know. I
19 don't have an answer to that one.

20 Q. Did you ever present a duplicate title to
21 DSC to floor plan a car when you had already sold
22 the car and passed on the original title to someone
23 else?

24 A. No.

25 Q. Okay. Have you ever moved vehicles to

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1 avoid DSC repossessing them?

2 A. Yes.

3 Q. Okay. Can you tell me about that?

4 A. When they -- we moved our vehicles the
5 day that they came in for repossession. We didn't
6 know what was going on, because we -- we did not
7 have any contact, we were not in contact with --
8 Lourdes would -- would not return our calls.

9 Q. M-hm.

10 A. To protect ourselves, we moved vehicles,
11 a few of them.

12 Q. Where did you move them to?

13 A. A friend of mine's property.

14 Q. Who was that?

15 A. Thornhill Equipment.

16 THE REPORTER: What was it?

17 THE WITNESS: Thornhill --

18 THE REPORTER: Thank you.

19 THE WITNESS: -- Equipment.

20 BY MR. MCCARTER:

21 Q. Were all of those vehicles that you moved
22 eventually returned to DSC?

23 A. Yes, every one of them.

24 Q. Okay. Have you ever moved cars to
25 prevent MAFS or AFC from repossessing?

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1 A. No.

2 MS. LASKY: I'm sorry. Can we take a
3 break?

4 MR. MCCARTER: Absolutely.

5 MS. LASKY: Okay.

6 [WHEREUPON, a brief recess is taken.]

7 BY MR. MCCARTER:

8 Q. All right. I just want to clear up a couple
9 of things we heard earlier. You -- you mentioned
10 an Art Felix that you may have dealt with at --

11 A. Yes.

12 Q. -- DSC?

13 A. Yes.

14 Q. Do you recall that?

15 A. Yes.

16 Q. Is it possible Mr. Felix was with AFC?

17 A. No, he was Dealer Services.

18 Q. You're sure.

19 A. Yeah.

20 Q. Okay.

21 A. Yes.

22 Q. And you mentioned an auction at Bowling
23 Green. Is that ABC Bowling Green?

24 A. Yes.

25 Q. Okay.

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1 A. One other thing. Can I throw this in?

2 This document on 307 on Exhibit Number 11 --

3 Q. Okay.

4 A. -- I mean, this was the -- this was a --
5 let's see if this is the right one. No, that's not.
6 I'm sorry. That's the wrong one [examines
7 document].

8 Yeah, I'm sorry. It's 452. That was not
9 requested by us. We -- we were at that time
10 locked out of the -- DSC's website.

11 Q. Okay.

12 A. That was requested, I guess, by that
13 Kevin Fredericks.

14 Q. Who's --

15 A. This is --

16 Q. -- Kevin Fredericks?

17 A. He's something to do with DSC. I'm not
18 sure of his title.

19 Q. Well how did you get it and produce to
20 us?

21 A. To be honest with you, I don't know.

22 Q. Okay.

23 A. I don't recall.

24 Q. Okay. And how did you come to this new
25 knowledge during our break?



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1 A. My wife ref -- talked to me.

2 Q. Okay. That's fine. I just want to make --

3 A. Yeah.

4 Q. -- sure you know --

5 A. Yeah, right.

6 Q. -- you're not supposed to be talking to
7 anybody else during the break. You can talk to
8 your attorney, obviously, but you're not supposed
9 to change your testimony and talk to people about
10 how to testify during the break. So just next time
11 let's be careful about that.

12 A. Okay.

13 Q. Okay.

14 MS. LASKY: Well, I would just -- as
15 a 30(b)(6), he does have the obligation to educate
16 himself, so --

17 MR. MCCARTER: Before the deposition,
18 yes, not during the deposition.

19 MS. LASKY: Okay.

20 THE WITNESS: Okay.

21 MR. MCCARTER: Okay.

22 BY MR. MCCARTER:

23 Q. All right. So we were -- so you've got a
24 blacklisting allegation in this case, too.

25 A. Yes.



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1 Q. Do you know that?

2 A. Yes.

3 Q. Okay. What -- what is your understanding
4 of your concern about blacklisting?

5 A. They -- after -- did not realize until a few
6 years later that Manheim put us on a K -- with
7 Auction Insurance, reported that we did not pay for
8 a vehicle. And they put us in what they call a KO
9 Book, which basically means that if I write a check
10 to the auction, that they don't insure that check.

11 Q. Who's "they"?

12 A. Auction Insurance.

13 Q. Okay.

14 A. Auction Insurance will not insure the
15 check. I found this out from Wolfe's Auto Auction.

16 Q. Okay. So it's your understanding that
17 Manheim put you in the --

18 A. Yes.

19 Q. -- this KO Book?

20 A. Yes.

21 Q. Okay. And that's not DSC?

22 A. Well, it was -- actually, at the time it was
23 NextGear.

24 Q. Okay.

25 A. Well no, actually, it was Manheim. It was

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1 actually Manheim, from my understanding. Now I
2 do not know that. That's what one of the guys at
3 the auction told me.

4 Q. Okay. So your knowledge is based on
5 something you heard at Wolfe's Auto Auction.

6 A. That's when I first heard it, and I actually
7 called them.

8 Q. Called who?

9 A. Called Auction Insurance. And they said
10 I was in the KO Book because I didn't -- and they
11 wouldn't give me much more details other than I
12 didn't pay for a vehicle.

13 Q. At Manheim.

14 A. At Manheim.

15 Q. Okay.

16 A. Which was part of the bankruptcy, so it
17 was discharged.

18 Q. Okay. We'll come to the bankruptcy in a
19 second.

20 A. Okay.

21 Q. All right. So I'll -- you can turn to it, if
22 you want, or I'll just read it to you. These are in
23 the interrogatories, which I think --

24 A. The fir -- the first --

25 Q. Number 4, maybe, Exhibit Number 4.

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1 A. Uh-huh.

2 Q. And at Response Number 15, which is on
3 Page 12 and 13, at -- at the end of that it says,
4 "Further responding, Mr. Mattingly was informed by
5 Carol Gardner with Wolfe's Auto Auction that
6 Mattingly Auto Sales was listed in the KO Book
7 compiled and issued by Auction Insurance
8 Agency." Do you see that?

9 A. Yes.

10 Q. And is that accurate?

11 A. Yes.

12 Q. Okay. So who's Carol Gardner?

13 A. She is -- she works for Wolfe's Auto
14 Auction. I don't know her official titles, but she
15 works for Wolfe -- Wolfe's Auto Action.

16 Q. Is she a manager there?

17 A. Yes, of some capacity, but --

18 Q. Not the --

19 A. -- what exactly I do not know.

20 Q. But not the --

21 A. She's not an owner.

22 Q. Not the general manager?

23 A. No.

24 Q. Okay. And you said -- I think you said it
25 basically means Auction Insurance Agency won't

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1 insure your checks.

2 A. Yes.

3 Q. Okay. And -- but you'd testified earlier
4 that you are able to write checks at Wolfe's
5 Evansville and Clark County; right?

6 A. Yes.

7 Q. All right. And do you know -- do you
8 know what connection, if any, Auction Insurance
9 Agency has to Manheim?

10 A. I have -- no, I wouldn't have any idea.

11 Q. Do you know if any -- what connection it
12 has to NextGear?

13 A. No, I wouldn't have any idea.

14 Q. Okay. And earlier in that same
15 Interrogatory Number 15 it says, "Subject to the
16 foregoing specific and general objections,
17 Mattingly Auto Group experienced the effects of
18 blacklisting' by NextGear/DSC by its inability to
19 participate in any auctions at auction houses
20 owned by Manheim and by the refusal of other
21 auction houses to extend credit to Mattingly."

22 A. Yes.

23 Q. Do you see that?

24 A. Yes. Uh-huh. Yes.

25 Q. Thank you. And that's true. I mean,

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1 that's still your testimony.

2 A. Yes.

3 Q. Okay. Do -- do you -- to the extent
4 Manheim -- you believe Manheim put you in the KO
5 Book for a non-payment to Manheim, do you have
6 any reason to think that's not the reason you can't
7 deal at Manheim?

8 A. I believe that is the reason; yes.

9 Q. Okay. Okay.

10 And this -- this sounds like you can deal at
11 other auction houses; you just don't necessarily
12 get credit from them.

13 A. Well, can I give you an example?

14 Q. Yeah.

15 A. If I bought a vehicle at Wolf -- Wolfe's,
16 being as they -- they just flat told me I am a good
17 customer; but I'm -- according to Auction
18 Insurance, in that situation I have to write them a
19 check that has to clear the bank before I get a
20 title.

21 So if I bought one today and the check cleared
22 three days from now, if I needed the title I have to
23 drive three hours to get it.

24 Q. Okay. You can still buy there. You just
25 have to wait a little longer for the title.



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1 A. Correct.

2 Q. Okay.

3 A. And at ABC Bowling Green, I talked to the
4 general manager, Jim Dodd. And he would -- he --
5 he said if I went in there to even pay in cash, he
6 has to get approval. And I haven't talked to him
7 since. I can't even go in there to pay -- pay -- buy
8 a vehicle because of Auction Insurance.

9 And ABC Bowling Green, which -- ABC Bowling
10 Green is where I go. So I'm assuming it's all ABC
11 auctions nationwide that I cannot even buy from
12 them even if I pay in cash, \$100 bills cash.

13 Q. But I thought -- I thought you said you
14 are doing business at ABC Bowling Green.

15 A. No, I -- I'm still go -- I still -- I don't go
16 to that one because it's -- they've changed their
17 dates. And I never have pursued it because --

18 Q. Okay.

19 A. -- I don't ever go to that one.

20 Q. All right.

21 A. I haven't been since 2012 probably.

22 Q. Gotcha. So -- but it was E-town, Clark
23 County, and Wolfe where you do business now?

24 A. Yes.

25 Q. And so they clearly have the ability to do

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1 business with you even if you're in the KO Book.

2 A. Yes.

3 Q. Okay. Do you know at all what Auction
4 Insurance Agency is?

5 A. It's an insurance agency that insures
6 checks for the var -- auc -- auctions all around.

7 Q. Okay. Do you know whether every
8 auction in the country uses them as an insurer?

9 A. No, I wouldn't have any idea. A lot -- a
10 lot of the big ones do.

11 Q. Okay.

12 A. I know Wolfe's does. Now, whether
13 E-town or Clark County do, I would not have any
14 idea.

15 Q. Okay.

16 A. I -- even though I've been to those
17 auctions, I probably haven't purchased a vehicle
18 from them in a couple years.

19 Q. Okay. And so you said you called Auction
20 Insurance Agency to confirm what Wolfe's told you;
21 is that right?

22 A. Yes.

23 Q. And when was that conversation?

24 A. That was probably -- I'm going say
25 thir -- 14, 15 possibly.

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1 Q. 2014?

2 A. 2014/'15.

3 Q. Okay.

4 A. Because I didn't even know it until it was
5 brought up where I bought one at Wolfe's, and they
6 said I -- I had to wait to pick up the title. And I
7 questioned why, and they -- they referred me to
8 Carol Gardner.

9 Q. Okay. Oh, so you talked to Auction
10 Insurance Agency -- Agency before you talked to
11 Carol?

12 A. No, but she was the one that informed me
13 that I -- about this KO Book store [phonetic].

14 Q. And that would have happened shortly
15 before the conversation with Auction Insurance --

16 A. No, I never did talk to Auction Insurance.
17 I talked to Auction Insurance after to find out what
18 was going on. I talked -- Carol Gardner is the one
19 that told me I was in a KO Book.

20 Q. Okay.

21 A. And then I -- and I had heard ex -- "Well,
22 what is that?" I don't -- you know, didn't know.
23 And then I called Auction Insurance, and that's
24 when they informed me it was Manheim; but they
25 had -- wouldn't give me a whole lot of details other

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1 than, "You didn't pay for a vehicle." And they
2 never -- apparently didn't care of my side of the
3 story.

4 Q. But did they mention Manheim?

5 A. I believe so; yes.

6 Q. Okay. That conversation --

7 THE REPORTER: I'm sorry. Mention
8 what?

9 THE WITNESS: Manheim.

10 MR. MCCARTER: Manheim.

11 THE WITNESS: Manheim.

12 THE REPORTER: Thank you.

13 MR. MCCARTER: That's M-a-n-h-e-i-m.

14 BY MR. MCCARTER:

15 Q. They -- but the conversation with Carol
16 and then the call to Auction Insurance Agency
17 were pretty close in time to one another?

18 A. It -- the first call to Auction Insurance,
19 yes.

20 Q. Okay. And you think that's 2014/2015?

21 A. Two -- yeah, because it was several years
22 before I even realized it.

23 Q. Okay. So between 2012 and two
24 thousand -- that call in 2014/2015, you didn't know
25 you were in the KO Book.

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1 A. Right. Correct.

2 Q. Okay. So it -- that means it didn't seem
3 to have any effect on your business during that
4 period.

5 MS. LASKY: Object to the form.

6 A. Well, other than the fact that it would
7 have -- it'd be -- it's kind of inconvenient to have
8 to drive for three hours for a title.

9 BY MR. MCCARTER:

10 Q. Okay. Do you have any records from
11 anybody that talk about the KO Book or the in --
12 uninsurable list or. . .

13 A. I don't recall. I don't believe so, but I
14 don't -- I don't really know.

15 Q. Is it something you searched for to
16 produce in this case?

17 A. I don't re -- I don't remember. I do -- I'm
18 going to correct myself. I believe there was a
19 letter from a lawyer that we sent from Stephen
20 Hopkins to Auction Insurance questioning that.

21 Q. Okay. And do you think you produced it
22 in this case, or not?

23 A. I believe so. I believe -- I believe it was
24 in there somewhere, but I don't. . .

25 Q. I've got a letter from Mr. Hopkins to

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1 Manheim asking about it.

2 A. Okay. It was -- I'm sorry.

3 Q. Is that what you think --

4 A. It was to Manheim, apparently.

5 Q. Okay. I'll -- I'll show you that in a bit.

6 A. Yeah, that's -- that's the -- that's the
7 one.

8 Q. Okay.

9 A. Because Manheim's the one that put me
10 in, so -- so I guess he sent the letter to them.

11 Q. And is this -- is this KO status -- KO Book
12 status, is it affection you on the sales side at all?

13 A. No, just on the purchase side, you know.

14 Q. Okay. Do you -- I should have asked this
15 earlier, but do you ever work as a representative
16 for other dealerships?

17 A. No.

18 Q. You -- since 2006, you've never bought or
19 sold for another dealership?

20 A. Well, I -- I -- yeah, I stand corrected.
21 I -- I probably have repped for people at auctions
22 if they're --

23 Q. On --

24 A. -- they had some vehicles there.

25 Q. On sales?

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1 A. Yes.

2 Q. Okay. And who -- what dealers were
3 that?

4 A. I remember doing it for Scott Auto Sales;
5 Parker & Sons. And then -- off the top of the
6 head, that's the ones I can remember, but that --
7 that would have been prior to 2012, not
8 since 2012.

9 Q. So you haven't repped cars for anybody
10 since 2012 besides Mattingly?

11 A. I don't believe so; no.

12 Q. Okay. Have you had anybody buy from
13 Mattingly since 2012 under a different dealership's
14 name?

15 MS. LASKY: Object to the form.

16 A. I -- clarify that.

17 BY MR. MCCARTER:

18 Q. Okay. So earlier we talked about some
19 repre -- representatives who have done some
20 purchasing for you; right?

21 A. Right.

22 Q. And I'm assuming they do that under the
23 name of Mattingly Auto Sales?

24 A. Correct; yes.

25 Q. So when they're at auction, they buy on

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1 your account.

2 A. Right.

3 Q. Have you ever had a dealer buy on its
4 own account or another account and then convey
5 the car to you --

6 A. Oh, since then?

7 Q. -- outside of auction?

8 A. No.

9 Q. Okay. You said "since then." Does that
10 mean since 2012?

11 A. Yes.

12 Q. Did you do that before 2012?

13 A. Rarely. I don't recall any specific one. I
14 don't -- I don't believe -- believe so.

15 Q. Okay.

16 A. I just -- I just don't recall it.

17 Q. But, theoretically, that would be a way
18 you could get cars from an auction --

19 A. Well --

20 MS. LASKY: Object to the form --

21 BY MR. MCCARTER:

22 Q. -- to go -- to have another dealer buy
23 them for you and -- and sell them for you?

24 A. I guess I could, but I don't -- I -- I --
25 honestly, I don't recall ever having another dealer

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1 buy a car for me, because most of the time I kind
2 of like to look at them myself.

3 Q. Yeah, but you've heard of dealers doing
4 that?

5 A. Yeah, I know -- I know it happens.

6 Q. Okay. All right.

7 And so you after the default with NextGear
8 cars, they -- there were some cars picked up;
9 right?

10 A. Correct.

11 Q. Okay. What number --

12 A. I'm on Number -- that will be Number 12.

13 [WHEREUPON, document referred to is marked
14 Defendants' Exhibit 12 for identification.]

15 BY MR. MCCARTER:

16 Q. Okay. I'm going to show you what we're
17 going to call De -- Defendant's Exhibit 12. This
18 document is MA 074 through MA 0707.

19 This looks like a series of Orders to
20 Repossess, but it was produced by you to us. Do
21 you -- do you recognize these documents?

22 A. Yes.

23 Q. What -- what are these?

24 A. These are the -- two cars -- two trucks
25 that they had to -- they sent down to repossess,

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1 Manheim.

2 Q. So this is -- these are the cars that you
3 had bought with Manheim money that Manheim's
4 trying to repossess?

5 A. Yes.

6 Q. Okay. Do you know whether these
7 particular cars were recovered?

8 A. Yes. The -- let's start with the '94
9 GMC --

10 Q. Uh-huh.

11 A. -- that would be 706. This is the one
12 where we voluntary -- voluntarily brought back to
13 Manheim; spoke with Andrew -- blanking on his
14 last name -- and left it -- you know, sent it back to
15 Manheim Louisville.

16 Q. Okay.

17 A. This is the one that is in question over
18 the KO Book. It was in the repossession, and it's
19 also in the bankruptcy. Mysteriously with this car,
20 six days after we brought it back to them, it wound
21 up in a junkyard.

22 Q. Okay. And this is --

23 A. We have no idea why.

24 Q. -- this is the GMC --

25 A. The 94.

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1 Q. -- that ends in 562 VIN?

2 A. I don't see the -- yes. Yes, I do. Yes.

3 Q. Okay. But that car was not on your DSC
4 line.

5 A. No.

6 Q. Okay. And then there's a -- I guess
7 there's a second car on 707?

8 A. Yes, this one here, 707 -- yes, seven --

9 Q. It's a Chevrolet 1500; 976 is the last of
10 the VIN?

11 A. Yes. Yes. This car was -- they sent that
12 to be repossessed. This particular truck had a
13 story behind it, as well. It was on repo -- they
14 sent it to repossess. This vehicle was paid off
15 when they came to get it. I had had it on the floor
16 plan, but I had previously paid it off.

17 And a few days before the repossession, I
18 actually had called and told -- asked them to -- "I
19 was busy at work, and could you go ahead and mail
20 me the title?" The title never -- after -- several
21 weeks after repossession, we were actually looking
22 for the title. Could not find it.

23 Called the auction, and they had the title.
24 And I said, "Well, I'll be in Louisville that day.
25 Don't worry about mailing it. I'll pick it up."

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1 We went to pick up the vehicle -- or the title.
2 And I put -- drove over here, and they had a lien
3 on the vehicle -- on a vehicle I had paid off. Not
4 only did they have that, but they was in Mattingly
5 Auto Sales' name, but the address was to Dixie
6 Auto Sales on Dixie Highway here in Louisville.

7 They -- Manheim, two days after the
8 repossession on a paid-off vehicle, took this
9 vehicle, retitled it, put a lien on it, and sent the
10 title to a dealer -- to -- in my name to another
11 dealer in Louisville.

12 Q. Okay. Did -- did you have an
13 understanding at all that -- that MAFS and DSC
14 have a blanket lien on all your inventory?

15 A. No, just --

16 Q. Okay.

17 A. -- the ones that I had floored.

18 Q. Okay. And on the -- going back to the
19 GMC that ends in 562 --

20 A. Uh-huh.

21 Q. -- you said it was returned to DS -- or to
22 Manheim. Where -- where was it when they tried
23 to pick it up?

24 A. It was in our lot -- at our lot.

25 Q. Okay. And why do you have these orders

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1 to repossess? Just curious.

2 A. The -- the-- the repossession guy, the
3 truck driver, actually let us have them, and we
4 made copies of them.

5 Q. Okay. All right.

6 And so at some -- after DSC recovers cars and
7 resells them, do you recall getting demand for
8 payment of the deficiency?

9 A. I believe so; yes.

10 Q. Okay. And at some point that proceeded
11 to litigation?

12 A. Yes.

13 Q. Okay. I'm going to show you what we're
14 going to call Exhibit 13.

15 [WHEREUPON, document referred to is marked
16 Defendants' Exhibit 13 for identification.]

17 BY MR. MCCARTER:

18 Q. And this is Bates labeled MA 41 through
19 MA 61, and then it's -- in the middle of the exhibit
20 it starts a different set of numbers, MA 656
21 through 672. Does this look like, you know, filings
22 and pleadings from that collection case?

23 A. Yes.

24 Q. Okay. And this is something you've
25 produced to us, so when -- when did you get

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1 these?

2 A. This -- I'm -- shortly thereafter, like -- it
3 appears, like, in November of 12 according to the
4 stamp. And I'm assuming that -- I'm assuming
5 that's about the same time when I --

6 Q. Okay.

7 A. -- when we got it.

8 Q. So you do recall getting served with
9 these when the case was pending?

10 A. Yes.

11 Q. Okay. And it -- it's DSC versus Mattingly
12 Auto Sales and you, personally, Barry Mattingly.
13 Do you see that?

14 A. Yes.

15 Q. And you had some understanding that you
16 were a guarantor on the line of credit?

17 A. Yes.

18 Q. Okay. Was your wife a guarantor on the
19 line of credit?

20 A. No.

21 Q. Okay. And she's not named in this case?

22 A. No.

23 Q. Okay. Do you -- I don't want to know
24 about discussions with your counsel, but do you
25 recall what you did with this complaint when you

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1 got served with it?

2 A. Oh, yeah, sure do.

3 Q. What did you do?

4 A. Well, my wife's laughing because it -- it
5 was a funny story, but, actually, I did nothing, and
6 my lawyer pretty much did the same.

7 Q. Okay.

8 A. Lawyers.

9 Q. And then later you got this motion for
10 default that starts at 656?

11 A. I -- [examines document].

12 Q. If you look at 658, it shows as -- that,
13 you know, DSC representing it served it on you.

14 A. Six -- oh, I'm sorry. I don't have that.

15 Q. The motion starts at 656, and the
16 certificate of service is on 658.

17 A. Oh, okay. Sure. Yeah.

18 Q. Do you recall getting that motion?

19 A. Yes, that looks familiar.

20 Q. Okay. And again, you produced this to
21 us; so it's in your records somewhere; right?

22 A. Yes.

23 Q. Okay.

24 A. I will give the -- can I -- I stop just to
25 give you a little bit? The -- my -- the lawyer -- I'm

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1 from Kentucky, so I -- obviously, I had to have a
2 lawyer that was licensed in Indiana.

3 Q. Uh-huh.

4 A. The lawyer I hired --

5 MS. LASKY: Wait. Wait. Just make sure
6 you don't tell him what you discussed with that
7 lawyer.

8 THE WITNESS: Okay.

9 A. Well, basically, he got sick, so that's kind
10 of -- so that's where we -- what happened in that
11 case.

12 BY MR. MCCARTER:

13 Q. Okay.

14 A. And so we had to move on.

15 Q. So you're saying that's why he didn't
16 answer and it was a default?

17 A. Right.

18 Q. Okay. And -- let's see -- if you keep
19 going back in that same exhibit at Page 665 -- it
20 starts at 665 and goes through the end of the
21 Exhibit at 672, there's an affidavit of debt. Do you
22 see that?

23 A. Six -- it's on 665?

24 Q. Yes.

25 A. Okay. Yes.

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1 Q. And -- and I'll represent to you: This was
2 an exhibit to that motion for default that we looked
3 at earlier. And again, this is produced by you. Do
4 you have any reason to believe you didn't get that
5 affidavit of debt?

6 A. No. That's correct. Yeah, we re -- we
7 received this.

8 Q. Okay. All right. I'm going to show what
9 we're going to call Exhibit Number --

10 MS. LASKY: 14.

11 THE REPORTER: 14.

12 BY MR. MCCARTER:

13 Q. -- 14.

14 MR. MCCARTER: Thank you.

15 MS. LASKY: No problem.

16 [WHEREUPON, off-the-record remarks are
17 made.]

18 [WHEREUPON, document referred to is marked
19 Defendants' Exhibit 14 for identification.]

20 BY MR. MCCARTER:

21 Q. So I just handed you 14 -- Exhibit 14.

22 A. Yes.

23 Q. And this, again, is sort of a composite
24 exhibit, but it's -- it's -- it's documents you
25 produced to us that appear to be letters from DSC

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1 and from MAFS in that May time frame.

2 A. Yes.

3 Q. Do you see that?

4 A. Yes.

5 Q. Do you recall -- since you produced them
6 to us, do you recall receiving all these letters
7 around that time?

8 A. Yes.

9 Q. Okay. And a few of them are dated a
10 little later. Like if you look at Man -- MA 120, you
11 know, it says --

12 A. Yes, I'm looking -- yes.

13 Q. -- it says July 24, 2012. So you would
14 have received it on or about that date?

15 A. Yes.

16 Q. And that one, for example, is signed by
17 Donna Kronauer -- Kro -- that's the lady you spoke
18 about before as representing MAFS?

19 A. Yes.

20 Q. Okay. Okay. All right.

21 Now, excepting the very last two pages, which
22 are MA -- MA 131 and 132, do you recall receiving
23 the rest of those letters from DSC or MAFS as
24 indicated?

25 A. 31, 32?

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1 Q. I'm sorry, except for 131 --

2 A. Oh, I'm sorry.

3 Q. -- and 132, did you receive the --

4 A. Yes.

5 Q. -- rest of them?

6 A. Yes, yes.

7 Q. Okay.

8 A. I believe so; uh-huh.

9 Q. And MA 131, 32 -- well, strike that.

10 MA 131 looks like a letter from your attorney
11 to DSC requesting information. Do you see that?

12 A. Yes.

13 Q. And it's -- it's signed by Dwight Preston?

14 A. Yes.

15 Q. Is this the attorney you hired to deal with
16 the complaint?

17 A. The -- the -- the original lawsuit in
18 Indiana?

19 Q. Yeah.

20 A. No.

21 Q. Okay. So you hired Mr. Preston after
22 that?

23 A. Yes.

24 Q. All right. And is -- did you have a -- I
25 don't want to know the details of it, but did you

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1 have a relationship with him before that?

2 A. Yes.

3 Q. Okay. Is he your general attorney?

4 A. No.

5 Q. Okay. And so here you're asking for a
6 detailed analysis and accounting of the DSC
7 claim?

8 A. Yes.

9 MS. LASKY: Object to the form.

10 A. Yes.

11 BY MR. MCCARTER:

12 Q. Okay. And is this something he did send
13 on your behalf on or about October of -- 17, 2012?

14 A. Yes.

15 Q. Okay. The very last page of that exhibit,
16 MA 132, is a card for a Terry Dashner at DSC. Do
17 you see that?

18 A. Uh-huh. Yes.

19 Q. How did you have that card? What does
20 that have to do with this?

21 A. He had something to do with DSC. I
22 remember the name, but I don't remember what he
23 did.

24 Q. Okay.

25 Q. All right. And you had an understanding

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1 that there was a judgement entered in that case
2 DSC filed against you?

3 A. Yes.

4 Q. Okay. I'm going to show you what we're
5 going to call Defendants' Exhibit 15. Sorry.

6 [WHEREUPON, document referred to is marked
7 Defendants' Exhibit 15 for identification.]

8 BY MR. MCCARTER:

9 Q. This document, again, is a composite, but
10 it's -- it's sort of, basically, two copies of -- of the
11 judgement. It's 34 of 33 -- I'm sorry. Strike that.

12 It's NG 3433 through NG 3435, and then it's
13 MA 673 through MA 674. And it looks like it's sort
14 of NextGear's copy of a judgement against you and
15 your copy of the judgement against you. Does that
16 look right?

17 A. Yes.

18 Q. Okay. And as we sit here today, have you
19 paid this judgement?

20 A. No.

21 Q. Do you have any intent to pay it?

22 A. No, it was discharged at bankruptcy.

23 Q. Okay. We'll come to that in a minute, but
24 who filed bankruptcy?

25 A. Barry Mattingly.

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1 Q. And would --

2 A. I did not -- huh?

3 Q. Did your wife file with you?

4 A. Yes.

5 Q. Okay. Did Mattingly Auto Sales pay --

6 A. No.

7 Q. Does Matting --

8 MS. LASKY: Sorry. What was your
9 question?

10 BY MR. MCCARTER:

11 Q. Does Mattig -- did Mattingly Auto Sales,
12 Inc. file bankruptcy?

13 A. No.

14 Q. Okay. Does Mattingly Auto Sales, Inc.
15 intend to pay this judgement?

16 A. No.

17 Q. Okay. If Mattingly Auto Sales, Inc. were
18 to recover damages in this current case, do you
19 believe that it would be -- those will be offset by
20 the amount of that judgement?

21 MS. LASKY: Object to the form.

22 A. I wouldn't have any idea.

23 BY MR. MCCARTER:

24 Q. Okay. All right.

25 I'm going to show you what we're going to call



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1 Defendants' Exhibit 16.

2 [WHEREUPON, document referred to is marked
3 Defendants' Exhibit 16 for identification.]

4 BY MR. MCCARTER:

5 Q. All right. And this is Bates labeled
6 NG 8820 through 8895. And I don't want to go
7 through these in detail. I'll call your attention to
8 particular pages, but this would appear to be,
9 generally, the -- the bankruptcy papers that --
10 of -- of yours and your wife's bankruptcy file?

11 A. Yes.

12 Q. Okay. And it looks like, from the top of
13 that, that that -- that this first document, the
14 petition, was filed in -- September 27, 2013. Do
15 you see that?

16 A. Yes.

17 Q. Does that sound about right to you?

18 A. About right.

19 Q. Okay. And when you signed these
20 bankruptcy papers, they were true, to the best of
21 your knowledge?

22 A. Yes.

23 Q. If you flip back to Page 8831 in there, in
24 Exhibit 16, do you see about halfway down there's
25 a list of a judgement in Hamilton Superior Court?

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1 Do you see that?

2 A. Yes.

3 Q. And that's the judgement DSC had against
4 you at the time?

5 A. Yes.

6 Q. And there's another judgement mentioned
7 in Breckinridge Circuit Court, Division 1, a civil
8 case right below that. Do you see that?

9 A. Yes.

10 Q. Who -- who is that case?

11 A. That was a -- like a Discover card.

12 Q. Okay. It's a -- a Discover card that went
13 unpaid?

14 A. Yes, it -- it was in the bankruptcy.

15 Q. And that was a personal Discover card?

16 A. Yes.

17 Q. Do you remember the amount of that
18 judgement?

19 A. No. It's -- it -- I'm sure it's listed here,
20 but I -- I don't remember it.

21 Q. Okay. And if we skip on back to
22 Page 8860 --

23 A. Okay.

24 Q. -- do you see that, it's called Schedule
25 F?

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1 A. [no audible response]

2 Q. And the first two creditor names on there
3 are Manheim Louisville and then NextGear Capital,
4 Inc. Do you see that?

5 A. Yes.

6 Q. And it shows business debt of Manheim
7 Louisville -- to Manheim Louisville of 9180?

8 A. Yes.

9 Q. And is that the -- the -- is that -- was that
10 an amount due to the auction or due to MAFS or
11 both?

12 A. It was due to -- actually due to MAFS.

13 Q. Okay. But as far as you know, this was
14 an accurate statement of the amount at that time?

15 A. Yes.

16 Q. Okay. And then it shows an amount due
17 to NextGear Capital of \$58,432.52. Do you see
18 that?

19 A. Yes.

20 Q. And that matches the judgement amount?

21 A. I believe so.

22 Q. Okay. And I'll -- if you can turn back
23 to 8869?

24 A. [complies]

25 Q. I realize these are digital signatures, but

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1 was junked. We don't know why.

2 Q. Okay. But do you -- do you know one way
3 or the other whether you had Pages 7996 and 7998
4 at the time you -- this letter was sent on your
5 behalf?

6 A. No, I do not know. I don't recall them,
7 but that's not to say we didn't have them.

8 Q. Okay. At or -- at or around the time that
9 DSC declared the default and -- and began to pick
10 up vehicles, were you part of any discussions with
11 DSC about the default?

12 A. No.

13 Q. Okay. When -- when did you first learn
14 that DSC was declaring a default?

15 A. When they came -- the day of the
16 repossession.

17 Q. Okay. And so if they had internal
18 discussions about that around that time, you
19 weren't a part of those.

20 A. Right. Correct.

21 Q. Okay. And have you ever seen any of
22 that described in writing?

23 A. Not that I recall.

24 Q. Do -- do you have any personal anger or
25 animosity at DSC for the default situation?

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1 MS. LASKY: Object to the form.

2 A. Well, if -- if I -- my -- my biggest thing, if
3 I was doing something wrong, I wish they had let
4 me know instead of swooping in one day and there
5 they are.

6 BY MR. MCCARTER:

7 Q. Okay. Did you ever apply for
8 reinstatement of your credit with DSC or
9 NextGear?

10 A. No.

11 Q. And that's fair enough, but what was the
12 reason that you didn't re-apply?

13 A. I just didn't want to mess with it. And I
14 didn't --

15 Q. Okay.

16 A. -- didn't want to mess with them.

17 Q. So how did you become involved in this
18 litigation?

19 A. An attorney from Louisiana contacted me
20 about it.

21 Q. Without telling me the substance of that
22 conversation, who was that attorney?

23 A. Hm. I'm blank on her name.

24 Q. Do you recall when you were contacted
25 about the current litigation you're being deposed

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1 in?

2 A. Gee, this is about a year ago possibly, I
3 think.

4 Q. Did you know Red Barn or any of the
5 other Plaintiffs in this case before that?

6 A. No.

7 Q. Have you talked to any of the other
8 Plaintiffs in this case?

9 A. No.

10 Q. So it looks like you, you know, had raised
11 this KO Book issue with at least Manheim in 2015.
12 Was that --

13 A. Yes.

14 Q. -- before or after the attorney from
15 Louisiana contacted you about this litigation?

16 A. Before.

17 Q. Okay. Before that attorney contacted you
18 about this litigation, had you ever raised the issue
19 of when interest begins to accrue with DSC?

20 A. No.

21 Q. With NextGear?

22 MS. LASKY: Object to the form.

23 A. Re -- repeat that. I'm sorry.

24 BY MR. MCCARTER:

25 Q. Okay. So be -- I think you said you were

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1 contacted about being involved in this case by an
2 attorney in Louisiana about a year ago.

3 A. Uh-huh.

4 Q. Okay. Before that, had you ever raised
5 the issue or discussed the issue with DSC about
6 when interest begins to accrue on floor plan cars?

7 A. I had --

8 MS. LASKY: Object to the form.

9 A. I had spoke with Lourdes and Donna on a
10 couple occasions about always looking to save
11 money, and I questioned particularly NextGear and
12 their charging interest two days before it
13 happened -- or two days with -- you know, we put it
14 on today; they already charged you two days.

15 BY MR. MCCARTER:

16 Q. I think you said earlier that was MAFS;
17 right?

18 A. MAFS.

19 Q. Okay.

20 A. And with Lourdes, it was always -- I was
21 always looking to cut -- you know, to save a dollar.
22 And I asked her -- because one -- an occasion, I --
23 I can't recall the exact vehicle or what happened;
24 but I got a vehicle -- like I say, I got a vehicle,
25 called -- got the -- I called to do -- pay the payoff,

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1 and they still didn't have the title, but yet I was
2 charged. I probably asked her for a deal --

3 Q. Okay.

4 A. -- but I don't remember.

5 Q. And -- and that's those title-absent cars;
6 right?

7 A. Yes.

8 Q. Okay.

9 A. That's when I was aware, because it --
10 it's -- DSC was different, because Manheim
11 actually had an office in their auction.

12 Q. Yeah.

13 A. Dealer Services did not. They just had a
14 rep, so I didn't see much of anything like that.

15 Q. Did that happen with MAFS, too? I mean,
16 they would start charging interest when they didn't
17 have the title present yet?

18 A. Yes.

19 Q. And did that happen with AFC?

20 A. That I do not know. I'm -- I'm sure
21 they -- I'm sure they all work alike, but --

22 Q. Okay.

23 A. -- I do not -- don't recall anything about
24 AFC.

25 Q. But in each of those cases, you had the

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1 car, already had it. You were doing whatever you
2 wanted to do with the car.

3 A. Yes.

4 Q. Okay. And do you recall when those
5 discussions with Lourdes would have been?

6 A. No, no. I -- I don't -- I don't know any
7 dates.

8 Q. Okay. Do you recall when you would have
9 had the discussion with Donna about the two days
10 of interest?

11 A. Yes, it would have been in her office.

12 Q. When?

13 A. Oh, the -- probably from day one when I
14 realized that they charged it on the compu --
15 you -- you could look at it on the computer and see
16 it.

17 Q. Okay. So it was transparent to you,
18 something that you were aware of.

19 A. Yeah. And I asked about it, and they
20 said -- their standard answer -- I mean, both of
21 them gave me the sta -- standard answer. "Well,
22 that's the way we do it."

23 Q. Okay. And the same thing with the
24 title-absent, that you -- you were aware you were
25 being charged interest for that period. You just

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1 didn't like it.

2 A. Yeah.

3 Q. Okay.

4 MS. LASKY: Object to the form.

5 BY MR. MCCARTER:

6 Q. And in each case, you continued to
7 borrow from DSC and MAFS after those
8 conversations?

9 A. Yes.

10 Q. Okay. All right.

11 Do -- are you aware that in this case you have
12 RICO allegations that I'll -- you know, I'm not --
13 I'm not trying to pin you to this summary, but
14 generally you're alleging a conspiracy between
15 NextGear, Cox Automotive, Cox Enterprises, John
16 Wick, and others. Are you aware of that?

17 A. Yes.

18 Q. Okay. What's your understanding of how
19 that conspiracy works?

20 A. As -- as far as the word "RICO," I didn't
21 know nothing about it. The only thing I've ever
22 seen is on A&E channel with mobsters. Outside of
23 that, I know nothing about it.

24 Q. Okay. So -- but, factually, what is your
25 understanding of how this conspiracy works?

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1 A. Basically, they were charging interest on
2 titles they did not have.

3 Q. Okay. Are you -- are you aware of any
4 specific conversations between NextGear and Cox
5 Automotive about that?

6 A. No, I wouldn't -- I wouldn't have any idea.

7 Q. Are you aware of any specific
8 conversations between NextGear and Cox
9 Enterprises about that?

10 A. No.

11 Q. Are you aware of any specific
12 conversations between NextGear and John Wick
13 about that?

14 A. No.

15 Q. Are you aware of any conversations
16 among any of those parties about the issue of
17 charging interest?

18 A. No.

19 Q. Okay. And by "conversations," I mean
20 emails, letters. You haven't seen any --

21 A. No.

22 Q. -- of those?

23 A. No, I would have.

24 Q. Okay. Do you -- do you have some --
25 you -- I think you said earlier you understood that

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1 Manheim acquired DSC sometime in 2012?

2 A. Yes.

3 Q. Okay. So did -- do you have any
4 knowledge about interactions between the Cox
5 entities and DSC before that?

6 A. No, I wouldn't have any. No.

7 Q. Okay. And just -- I think you said this,
8 but just to confirm: You never dealt with -- you
9 never had a line of credit with NextGear after DSC
10 and MAFS were merged into Next -- to become
11 NextGear?

12 A. After May of 12, no, we nev -- we didn't
13 have -- ever have no business after May of 12.

14 Q. Okay. Just the collection and bankruptcy
15 stuff?

16 A. Yes.

17 Q. Okay. All right.

18 You've also got what's called an unjust
19 enrichment claim in this case where you're
20 suggesting that NextGear and/or the other
21 defendants received an unfair benefit from you --
22 or an unjust benefit from you. What's your
23 understanding of that?

24 A. Is that --

25 MS. LASKY: Object to the form.

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1 A. I'm not really sure what -- the legal term,
2 but it seemed like I was paying them money that
3 they should not have had yet, you know,

4 BY MR. MCCARTER:

5 Q. And are --

6 A. -- as far as the interest and stuff.

7 Q. Okay. Is -- is that focused on the
8 title-absent cars?

9 A. Well, yes, and -- and I -- I -- of course, I
10 wouldn't know if they char -- how much they
11 charged daily, or if -- even if I -- even if they did
12 have a title, I don't know the length of it because,
13 you know, I just wouldn't have -- the printout did
14 not say that. So I wouldn't have caught it.

15 Q. To the extent you had the cars at that
16 point and you'd been able to take that by putting it
17 on your DSC or MAFS floor plan, what did -- why
18 do you think that's unfair?

19 A. It's just --

20 MS. LASKY: Object to the form.

21 A. -- costing me more money.

22 BY MR. MCCARTER:

23 Q. Okay. Did you -- I think you said
24 title-absent cars were disclosed on the block or
25 some --

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1 A. Yes.

2 Q. Okay. So you could have not purchased
3 title-absent cars if you chose to.

4 A. Yes.

5 Q. Okay. And if you did choose to purchase
6 a title-absent car, you could choose not to put that
7 on your DSC line.

8 A. Right.

9 Q. Okay. And to -- during the period when
10 you had an AFC and a MAFS line, you could have
11 chosen to put the car on your AFC line instead of
12 your MAFS line.

13 A. Like we -- yeah, we could choose --
14 choose anybody, I guess.

15 Q. And the same thing, when you had a
16 DSC/MAFS line, you could have chosen to put the
17 car on MAFS instead of DSC.

18 A. Yes.

19 Q. Or you could have chosen to pay cash for
20 them.

21 A. Yes.

22 Q. Okay.

23 A. Of course, when I paid cash at the
24 auction, if I wrote the auction a check today with a
25 title-absent, they don't actually cash my check

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1 until they receive the title.

2 Q. Okay. What benefit do you believe you
3 conferred on John Wick, who's a Defendant in this
4 case?

5 A. I wouldn't have any idea.

6 Q. Okay. What benefit do you believe you
7 conferred on Cox Enterprises in this case?

8 A. The same. I have no any.

9 Q. Okay. What benefit do you believe you
10 conferred on Cox Automotive in this case?

11 A. No idea.

12 Q. Okay. All right.

13 You said before, I think, two -- correct me if
14 this is wrong, but before 2012 you might
15 have 20, 25 cars in the lot, or was it 15, 20?

16 A. Anywhere -- more like 15.

17 Q. Okay. And now you might have 1 or 2 on
18 the lot?

19 A. Yes.

20 Q. Okay. But might you be owning other
21 cars that are at auction or somewhere else?

22 A. I could --

23 MS. LASKY: Object to the form.

24 A. -- but that's -- right now that's the only
25 ones we have for sale.

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1 BY MR. MCCARTER:

2 Q. Okay. So, on average, you're owing 1
3 or 2 cars at a time now?

4 A. Yes.

5 Q. Okay. And, on average, you think you
6 were owning 15 or so before --

7 A. I'd be -- I'd have 15 and --

8 Q. -- before 2012?

9 A. Yes.

10 Q. Okay. Do you have any recollection of
11 sort of what your net income was annually from the
12 automotive business between 2006 and 2012?

13 A. No, I don't -- I don't recall right off the
14 top of my head.

15 Q. Can you ballpark it?

16 A. I know -- I could give you ballpark of
17 gross sales --

18 Q. Okay.

19 A. -- if that would help you any. It -- it'd
20 be -- let's say prior to 12, we -- we would do
21 anywhere from 800. And I -- I think one time we
22 might have even hit a million. This year our gross
23 sales would luckily to -- be 60,000.

24 Q. Okay. But, obviously, gross sales
25 doesn't -- hasn't --

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1 A. Turn -- turned a --

2 Q. -- yet subtracted out of your --

3 A. -- turned a profit.

4 Q. -- costs; right?

5 MS. LASKY: Wait, wait, wait.

6 BY MR. MCCARTER:

7 Q. Gross sales hasn't yet taken out your
8 cost of doing business; right?

9 A. Correct.

10 Q. All right. So do you have any
11 recollection of what your net income was any time
12 between 2006 and 2012?

13 A. No.

14 Q. Would that be shown on accounting
15 records or tax returns that --

16 A. Tax; uh-huh.

17 Q. -- that you would still have access to?

18 A. Yes.

19 Q. Okay. And since 2012, do you have any
20 sense of what your net income would be from the
21 automotive business?

22 A. Yes.

23 Q. What is it?

24 A. I -- I don't recall the income last year.

25 I -- I don't recall it off the top of my head.



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1 Q. Yeah.

2 A. A -- not -- not that I recall. I mean, I
3 don't know what you're looking for in that answer.

4 Q. Okay. How about the interest issue?
5 Have you done anything -- demand payment of
6 interest back from NextGear?

7 A. No.

8 Q. Okay.

9 A. I mean --

10 Q. Have you -- well, strike that.

11 Okay. Do you have an understanding that you
12 and the other Plaintiffs are seeking to represent a
13 class of Plaintiffs in this case?

14 A. Yes.

15 Q. What is your understanding of -- of that
16 class?

17 A. The only thing --

18 MS. LASKY: Object to the form.

19 A. I don't know much about that stuff. It --
20 legal stuff. The only thing I know, it's just a --
21 "class action" means -- I -- I assume it to be a
22 group of people --

23 BY MR. MCCARTER:

24 Q. Okay.

25 A. -- a group of entities or whatever.

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1 Q. Do you have some understanding it's
2 other NextGear borrowers?

3 A. Yes.

4 Q. Okay. Do you have any idea of how far
5 back or anything like that?

6 A. No; huh-uh.

7 Q. Okay. Have you spoken to any other
8 dealers about this case?

9 A. No.

10 Q. Besides your attorney and your wife, have
11 you spoken to anybody else about this case?

12 A. No.

13 Q. Do you -- have you made any kind of
14 study of what the other NextGear dealers look like
15 or what their business looks like?

16 A. No.

17 MS. LASKY: Object to the form.

18 BY MR. MCCARTER:

19 Q. Okay.

20 A. No.

21 Q. Do you have some understanding that
22 other NextGear borrowers may be bigger than you?

23 MS. LASKY: Object to the form.

24 A. That's possible; yes.

25 BY MR. MCCARTER:

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1 Q. Do you -- have you heard of dealers
2 having multiple lots?

3 A. With NextGear?

4 Q. Yeah.

5 A. No, I wouldn't know any --

6 Q. Okay.

7 A. -- anything about their personal business.

8 Q. Do -- do all dealers buy the same types of
9 cars?

10 A. No.

11 Q. So they can be higher end? Lower end?

12 A. Yes.

13 Q. Okay. Some can deal in volume and some
14 can deal in just high-profit cars?

15 A. Yes.

16 Q. Okay. Do you -- do all dealers go to
17 auctions?

18 A. I assume --

19 MS. LASKY: Object to the form.

20 A. -- I -- I don't know about the other
21 people's business. You know, I wouldn't have any
22 idea.

23 BY MR. MCCARTER:

24 Q. Okay. Do -- do you have some reason to
25 believe that all the other NextGear borrowers have

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1 defaulted and been in collection with NextGear?

2 MS. LASKY: Objection --

3 A. I wouldn't have --

4 MS. LASKY: -- to form.

5 A. -- any idea.

6 BY MR. MCCARTER:

7 Q. Okay. Do you know anything about new
8 loan forms that NextGear may have implemented
9 after --

10 A. No.

11 Q. -- you stopped dealing with NextGear?

12 A. No.

13 Q. Okay. Have you been part of any
14 discussions between --

15 [WHEREUPON, off-the-record remarks are
16 made.]

17 BY MR. MCCARTER:

18 Q. Have you been part of any discussions
19 between NextGear and auto auctions about
20 payoffs?

21 A. No.

22 Q. Have you been part of any discussions
23 between DSC and auto auctions about the payoff
24 between the auction and DSC?

25 A. No.

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1 Q. Okay. Have you personally been part of
2 or reviewed any agreements between Nextgear and
3 DSC and any auctions?

4 A. No.

5 Q. Okay.

6 MR. MCCARTER: Okay. Let's go off the
7 record for a second.

8 [WHEREUPON, a brief recess is taken.]

9 BY MR. MCCARTER:

10 Q. Mr. Mattingly, I'm just going to clear up a
11 few things I may have missed before or don't know
12 the answer to. So I understand your wife, Ms.
13 Mattingly, is a co-owner and vice president of
14 Mattingly Auto Sales, Inc.; correct?

15 A. Correct.

16 Q. Okay. Operationally, though, what's her
17 role? What does she do for the business?

18 A. Basically does the book work.

19 Q. Okay. And has that been true
20 since 2006?

21 A. Yes.

22 Q. And this is Ms. Mattingly in the room with
23 you?

24 A. Yes.

25 Q. Okay. So at some point, if we needed

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1 more information about your bookkeeping and
2 accounting and revenue records, would she be the
3 person to testify to that?

4 A. She could answer quest -- if -- if we had
5 them that far back, yes.

6 Q. Okay. Does she do anything else for the
7 business?

8 A. No.

9 Q. Does she buy or sell at auction?

10 A. No.

11 Q. Does she talk to retail customers about
12 sales?

13 A. Yeah, if I'm not there.

14 Q. Okay. The other reps that we talked
15 about buying at auction for you, did they ever deal
16 with your retail customers?

17 A. No.

18 Q. Okay. Are they all independent
19 contractors?

20 A. Yes.

21 Q. Okay. Do you do 1099s on them?

22 A. No.

23 Q. Okay. Do you pay them in cash?

24 A. No, I -- I do not pay them anything.

25 Q. Okay. So how do they make their money?

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1 A. They -- they would -- If they -- basically,
2 they buy the car with a check -- on my check.

3 Q. Yep.

4 A. They would purchase the car under me. If
5 they sold it, they would just write me the check for
6 whatever the amount is that they paid for it at the
7 auction. I didn't ma -- basically, I didn't make any
8 money off of them.

9 Q. So why -- why would you let them buy on
10 your account if you don't make any money?

11 A. The -- well, one hand washes the other.
12 You know, they might have to do something for me
13 in their business.

14 Q. Like what?

15 A. Well, just maybe come up with a car,
16 trade, you know, that kind of thing.

17 Q. Okay. All right.

18 Were any of the cars that, you know,
19 NextGear -- that were involved in the NextGear
20 default, were they purchased by any of these other
21 individuals?

22 A. Yes.

23 Q. Okay. Were any of the cars with those
24 other individuals when NextGear tried to acquire --

25 A. Yes.

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1 Q. Yes?

2 A. Yes. Yes.

3 Q. Okay. And -- and which individuals?

4 A. Kenny Barger.

5 Q. Barger?

6 A. Bar -- B-a-r-g-e-r.

7 Q. Does he have his own lot?

8 A. No.

9 Q. Was he trying to sell the cars wholesale
10 at auction, or something else?

11 A. No, he would just drive them and sell
12 them later.

13 Q. From where?

14 A. He -- from his house or take them to the
15 auction or -- he has a farm-selling business, I
16 guess you would say. You know, he -- he's a
17 trailer, I guess you might. . .

18 Q. So he doesn't -- at the -- at the time,
19 anyway, in 2012 he didn't have a lot with a sign?

20 A. No.

21 Q. Was he a licensed car dealer?

22 A. Yes, through me. He didn't have his own
23 dealership. Is that -- is that what you're asking?

24 Q. Yeah. Did he have a license as a dealer?

25 A. No.

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1 Q. -- cars you might own --

2 A. Yeah, other than cars.

3 Q. -- do you own a building or --

4 A. No.

5 Q. -- anything like that?

6 A. No.

7 Q. Okay. Do you have equipment for the
8 dealership?

9 A. No.

10 Q. Okay. Is your job with Ford as an income
11 quality inspector -- incoming quality inspector, is
12 that a full-time job?

13 A. Yes.

14 Q. Okay. And it has been for the whole
15 time?

16 A. Yeah, for all -- yes --

17 Q. Okay.

18 A. -- 27 years.

19 Q. Twenty-seven years? Okay. So when did
20 you work on the car business? Like what time of
21 the day?

22 A. Depending on what shift I was on,
23 weekends or during the day I would --

24 A. Okay.

25 Q. At the time -- at the time of the re --

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1 started, I'm trying to think what year. Basically, I
2 worked night shift up until two thousand possibly
3 seven. Then I went to day shift, a day-shift job.

4 Q. Is it fair to say your job with Ford is your
5 main job?

6 A. Yes.

7 Q. Okay. What -- what do you make from
8 Ford now?

9 A. Last year maybe 100,000.

10 Q. Okay. And is that all salary, or is there a
11 bonus component.

12 A. There are bonuses included in that.

13 Q. Okay. How's that changed since 2002 --
14 two -- I'm sorry, 2012?

15 A. I -- really, the only other thing would
16 be -- is raises.

17 Q. So roughly from what level? I mean, I
18 don't need exact numbers, but. . .

19 A. I'd say a 20% increase possibly.

20 Q. Okay.

21 A. You know, I'd -- I'd have to look back. I
22 wouldn't have any -- you know, right off the top of
23 my head.

24 Q. Is it steady 3 --

25 A. Nor -- nor --

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1 Q. -- 3% a year --

2 A. -- nor --

3 Q. -- or 5% a year?

4 A. Yeah, getting normal raises. Yeah, I --
5 yes, that's about -- that's about right.

6 Q. Okay. And are the bonus -- what are the
7 bonuses based on?

8 A. Profit sharing.

9 Q. Okay. And that income has not been
10 affected by the DSC situation?

11 A. No.

12 Q. Has it been affected for the positive? I
13 mean, have you had more time to focus on Ford?

14 A. Well, yes, I have the same time of -- the
15 other was part-time.

16 Q. Okay.

17 A. Same thing.

18 Q. Were there -- at -- at the time of the
19 NextGear default in, you know, May of 2012, were
20 there a couple of vehicles involved that you had
21 acquired from ABC Bowling Green? Does that ring
22 a bell?

23 A. I'm sure I have. I'm sure I've purchased
24 some there --

25 Q. Okay.



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1 A. -- floored them from there; yes.

2 Q. Do you recall whether there were any
3 cars that you floored from ABC Bowling Green with
4 DSC that hadn't actually sold at ABC Bowling
5 Green?

6 A. Yes.

7 Q. Okay. Can you tell me about those?

8 A. Yes. To put them on the floor plan,
9 they -- with a suggested -- started with Art Felix to
10 Lourdes to Donna Kronauer, they -- if I wanted to
11 put them on a floor plan just to run them through
12 the auction and for -- to another dealer to the --
13 through the -- through there or to put them on --
14 we had to put them on the floor plan, more or less.

15 Q. But when you say "run them through the
16 auction," you mean they ran through, and then they
17 didn't sell --

18 A. Right.

19 Q. -- and so you had a no-sale ticket.

20 A. Yeah.

21 Q. And then those were put on a floor plan
22 with a no-sale ticket.

23 A. Yeah, or I purchased them from the
24 dealer whose name was in.

25 Q. But you used the no-sale ticket to put

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1 them on the floor plan.

2 A. Well, it was a -- it was a no-sale ticket,
3 but they would -- it would turn into a sale, I guess
4 you would say, to put them on the floor plan.

5 Q. Well -- so I -- and if you don't --

6 A. It's --

7 Q. -- know the answer, that's fine, but
8 what's the value of -- of running it through and not
9 selling it? I mean, how does that help --

10 A. Well --

11 Q. -- for --

12 A. -- to -- to -- what -- what you're -- what
13 you're asking is -- is to put them on the floor plan,
14 Lourdes and Art Felix would have to say, "Put
15 them -- run it through the auction as -- as -- as a
16 post or trade," and I don't -- I can't remember if
17 they do trades or not, but, "Run it through the
18 auction, have a -- you know, put it on there, and
19 we could put it on the floor plan as a sale through
20 the auction."

21 And the -- you know, I -- I said, "Well, that
22 sounds like a winner to me," because it sounded
23 like a good deal.

24 Q. Okay. And you're say -- so you're saying
25 they're fully aware that it didn't sell at auction.

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1 That is just ran and --

2 A. They are --

3 Q. -- no sale.

4 A. Yes. Yes.

5 Q. Okay.

6 A. Yes.

7 Q. And do you know anything about a Post
8 Office Box 66 that titles may have been sent to
9 related to your dealer --

10 A. Yes, it was Breckenridge Automotive.

11 Q. Okay. So what is -- what is Breckenridge
12 Automotive?

13 A. It's -- it's a business that we would put
14 titles, you know, if it just -- detail work, parts, or
15 something, me and a friend of mine we had some --
16 starting a business, but it was never an official car
17 lot.

18 THE REPORTER: I'm sorry. It was or
19 wasn't?

20 THE WITNESS: It was never a -- not an
21 official car lot.

22 THE REPORTER: Thank you.

23 A. As opposed to an auto sales.

24 BY MR. MCCARTER:

25 Q. So you were doing business with a friend

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1 under the name of Breckenridge Automotive.

2 A. Yes.

3 Q. And there you did detail work?

4 A. Detail, parts, you know, tru -- you know,
5 anything that we needed to do. We just never did
6 use it, and then dissolved it.

7 Q. All right. And was it -- so when you say
8 "dissolved it," does that mean it was a legal
9 entity? Did you --

10 A. Yes.

11 Q. -- incorporate it?

12 A. Yes, it was an LLC.

13 Q. Okay. Who was the friend?

14 A. It was Richard Smiley, and the entity was
15 owned by Denise, my wife.

16 Q. Is there any reason you would have titles
17 for cars that were on your NextGear floor plan or
18 your DSC floor plan sent to that address?

19 A. Yes. They had to have a -- they had to
20 have a title from -- from a -- someone else other
21 than Barry Mattingly. So with their -- they told me
22 how to do this, the reps, to put it into a dealership
23 name or some other name. The dealer would sign
24 it to Mattingly Auto Sales, and we could put it on
25 the floor plan.

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1 Q. So you're -- you're saying that you were
2 advised to create a -- an apparent transaction
3 between Breckenridge and Mattingly Auto sales so
4 that that car could be floored with NextGear.

5 A. Yes.

6 Q. Okay. And you're saying that the
7 DSC/NextGear people told you to do that?

8 A. Well, they -- well, they said it would
9 work, and that's how I could put them on that way.
10 And that's what I did.

11 Q. Okay. And who specifically advised you
12 of that?

13 A. The first person was Art Felix, and then
14 Lourdes and then Donna at MAFS.

15 Q. Would -- but Donna wouldn't have spoken
16 for the Next -- for the DSC --

17 A. No, no.

18 Q. -- floor plan --

19 A. No.

20 Q. -- right?

21 A. No, but she was aware of it because --

22 Q. Okay.

23 A. -- she'd actually done some for me,
24 so. . .

25 Q. Would -- would DSC typically finance

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1 those cars at the price that you showed on the
2 ticket between Breckenridge and you?

3 A. Yes.

4 Q. And that -- that was sort of an artificial
5 price that your two entities made up?

6 A. Right, or -- it was always under their --
7 under their level, under their max-out range, I
8 guess.

9 Q. And Breckenridge didn't have a line with
10 DSC --

11 A. No.

12 Q. -- right? Okay.

13 So you're moving cars from Breckenridge's
14 name to Mattingly Automotive's name so they can
15 be put on Mattingly Automotive's floor plan?

16 A. Correct.

17 Q. Okay. So how did Breckenridge acquire
18 the cars in the first place?

19 A. Oh, that -- I mean, just regular
20 purchases. I mean, just trades or trade-ins or
21 anything like that.

22 Q. Were they purchased and traded -- were
23 they purchased by Breckenridge or traded to
24 Breckenridge, or had they been purchased by
25 Mattingly in the first place?

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1 MS. LASKY: Object to the form.

2 A. Purchased by Mattingly. I mean, it was
3 our -- it was our vehicle, but they told me how to
4 show -- I needed to have the title done to someone
5 else's name.

6 BY MR. MCCARTER:

7 Q. Okay. So did the title show Mattingly
8 Auto Sales assigned to Breckenridge, Breckenridge
9 assigned back to Mattingly Auto Sales?

10 A. No, no. It was a new title. It was always
11 dealer at the la -- it was -- would say Bracken --
12 so this title here was Breckenridge Automotive, or
13 whoever it may be; then I would dealer assign it to
14 Mattingly Auto Sales, and then sold -- you know,
15 put on the floor plan.

16 Q. Okay. So did -- did Breckenridge
17 Automotive have a dealer license?

18 A. No.

19 Q. Okay. So it was dealing in cars without a
20 dealer license.

21 A. Right.

22 Q. Okay.

23 A. It was like an individual, your name or
24 something like that. It just couldn't be in my
25 personal name or Mattingly Auto Sales to -- on a

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1 trade.

2 Q. Do you have any idea how many times
3 this happened --

4 A. No.

5 Q. -- over the years?

6 A. That -- no.

7 Q. Estimate?

8 A. No, I wouldn't have any idea.

9 Q. Okay. Do you -- do you have a sense of
10 whether Breckenridge Automotive was supposed to
11 have a license under the law to transfer those
12 cars?

13 A. Yes, they would not have -- it was --
14 there's no need to, because it was not a
15 dealership; don't need to have a license.

16 Q. Okay. All right.

17 So -- but just to be clear: We're talking about
18 cars that belong to Mattingly Auto Sales being
19 assigned to Breckenridge and being assigned back
20 to Mattingly so they could be put on the NextGear
21 floor plan.

22 A. Correct, but it actually wouldn't be
23 assigned -- well, as far as what you're assigning,
24 it would be tilted. I'd have a title.

25 Q. Okay.

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1 A. And -- and then -- then reassigned -- or
2 assignment to Mattingly Auto Sales.

3 Q. Okay. Breckenridge got that title in its
4 name in the first place somehow; right?

5 A. Right.

6 Q. All right. So how did it do that?

7 A. Just transferred it.

8 Q. From Mattingly Auto Sales.

9 A. Or -- Mattingly Auto Sales or a trade-in
10 from John Doe or whoever.

11 Q. Okay. So we're talking about cars that
12 were originally purchased by Mattingly Auto Sales
13 or traded to Mattingly Auto Sales. You assigned
14 those to Breckenridge. Breckenridge gets a new
15 title, and assigns those back to you.

16 A. Through the -- run through the auction.

17 Q. So the second part -- the second
18 transaction from Breckenridge to you is run
19 through the auction?

20 A. Or -- yeah, or -- could be, or -- I could
21 run it through the auctions or just give it to them
22 and say, "Here, Donna. Here's the title. Put it on
23 the floor plan."

24 Q. Okay. That's fine. I -- I just want to be
25 clear that they -- these are cars started out

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1 belonging to Mattingly --

2 A. Yeah. Well --

3 Q. -- Auto Sales; right?

4 A. I misspoke, I guess. Breckenridge
5 Automotive couldn't run it through the auction
6 because they're not a dealer. Your -- that's
7 correct; yeah.

8 Q. They -- they could not then run through
9 auction.

10 A. Right.

11 Q. Okay. So again, Mattingly Auto Sales
12 may have acquired it at auction or by trade-in;
13 right?

14 A. Uh-huh; correct.

15 Q. Okay. And then you assign them or
16 convey them to Breckenridge Automotive; right?

17 A. Right.

18 Q. And that wouldn't happen at auction
19 because Breckenridge couldn't go to auction.

20 A. That's correct.

21 Q. Okay. And so then Breckenridge is going
22 to assign them back to you, Mattingly Auto Sales.
23 And they're getting -- they're not going to go to
24 auction because Breckenridge can't go to auction;
25 right?

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1 A. Correct.

2 Q. And then Mattingly Automotive is going to
3 take that car and put it on its -- its DSC floor plan.

4 A. Correct.

5 Q. Okay. Do you think that happened more
6 than five times?

7 A. I -- I'd -- I'd have to look. I -- I don't
8 know. It's possible. It's possible. I don't know.

9 Q. Okay. Did you have any sense that DSC
10 might be relying on the --the price that you --
11 Breckenridge created to Mattingly as the floor plan
12 amount?

13 MS. LASKY: Object to the form.

14 A. You have to -- run it by me again.

15 BY MR. MCCARTER:

16 Q. Okay. So did -- did DSC finance those
17 cars at the price that Matt --

18 A. We put on -- yes.

19 MS. LASKY: Wait, wait, wait.

20 BY MR. MCCARTER:

21 Q. -- that you put on?

22 MS. LASKY: Let him -- let him finish.

23 THE WITNESS: I'm sorry. I'm sorry.

24 BY MR. MCCARTER:

25 Q. Did DSC finance those cars at the price

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1 that Breckenridge and Mattingly assigned to that
2 second transaction?

3 A. Yes.

4 Q. Okay. Did -- were you -- as Mattingly
5 Auto Sales or through Breckenridge, were you ever
6 involved in creating bills of sale later on cars that
7 had already been assigned to you?

8 A. To put them on MAFS and the -- yes, we'd
9 have to have a bill of sale.

10 Q. Okays. So sometimes you would have
11 gotten the car title to you long before, but then
12 you would create a bill of sale to -- to put it on the
13 floor?

14 A. Yes. I'd have to have a -- from
15 Breckenridge, just use it as example, Breckenridge
16 to Mattingly, I'd have to have a bill of sale. And
17 they would -- that was also a requirement from the
18 floor plan companies.

19 Q. Okay. So I -- I understand the floor plan
20 companies required a bill of sale, but are you --
21 are you saying the floor plan companies told you
22 to go out and create a bill of sale for a transaction
23 that occurred months before and will --

24 A. Yes.

25 Q. -- put it on the floor?

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1 A. Uh-huh.

2 Q. Okay. Did you -- did -- at the time, did
3 you see any problem with that, that it might be a
4 mis-representative bill of sale?

5 A. No, because both -- like I said, both
6 representatives were aware of it, so it seemed like
7 something like, you know, they -- they didn't mind.

8 Q. Okay. Would -- would the -- the -- when
9 you and -- when Breckenridge assigned price on its
10 deal on Mattingly Auto Sales, was that always the
11 same price at which Mattingly had acquired it at
12 auction?

13 A. That I wouldn't know. I can't remember
14 all that stuff. It's -- that's so long ago.

15 Q. Is it possible --

16 A. I couldn't give you numbers.

17 Q. -- it was at a higher price? So in other
18 words, you originally required as Mattingly at one
19 price, then you convey to Breckenridge for -- for
20 nothing, and then Breckenridge conveys it back to
21 Mattingly at a higher price?

22 MS. LASKY: Object to the form.

23 A. I mean, it's possible depending on if
24 there was repairs involved. I -- I -- I just don't
25 recall specifics.

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1 BY MR. MCCARTER:

2 Q. Okay. So -- but in -- if that happened,
3 you could be financing it with NextGear at a higher
4 price than you paid at auction for it.

5 MS. LASKY: Object to the form.

6 A. I'd just have -- it's -- I guess that would
7 make sense, but I just -- I don't recall doing it. I
8 mean, I just don't recall the details.

9 BY MR. MCCARTER:

10 Q. You don't recall either way? You can't
11 say --

12 A. No, I --

13 Q. -- it happened?

14 A. -- I don't know. I don't know.

15 MS. LASKY: Object to the form.

16 BY MR. MCCARTER:

17 Q. So besides Breckenridge -- oh, strike
18 that.

19 Breckenridge Automotive, LLC, is that a
20 Kentucky LLC?

21 A. Yes.

22 Q. Okay. Is it still existing?

23 A. No.

24 Q. When was it shut down?

25 A. I think maybe two years ago.

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1 Q. Okay. Did it file tax returns?

2 A. Yes.

3 Q. All right. And did it have profit --

4 A. No.

5 Q. -- during -- at all?

6 A. Huh-uh.

7 Q. Okay. Did it file its own returns, or did
8 it -- or was it passed through to you, and you --

9 A. It filed its own return -- had to file --
10 LLCs in Kentucky have to file their own return.

11 Q. Okay. And did Jackson Hewitt do those,
12 too?

13 A. Yes.

14 Q. Okay. And how -- what -- what years,
15 roughly, was Breckenridge Automotive in
16 existence?

17 A. I'd say 10, 11, 12 -- probably about
18 four years, from, say, 12 to -- or 11 -- or 10
19 to 14 possibly.

20 Q. 2010 to 2014?

21 A. Possibly, yes.

22 Q. Okay.

23 A. I'd have to -- I don't remember, to be
24 honest with you. That's close. Somewhere in that
25 time frame definitely.

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1 Q. Do you recall Breckenridge Automotive
2 ever dealing at auction, Manheim or otherwise?

3 A. No.

4 Q. Okay. Have you or your wife ever done
5 your own business under any other entity besides
6 Mattingly Automotives -- Automobile Bill -- excuse
7 me, Mattingly Automotive Sales, Inc. or
8 Breckenridge Automotive?

9 A. No.

10 Q. Okay. All right.

11 I'm just going to read a paragraph to you from
12 your declaration in this case to support your
13 motion for class certification. Paragraph 7 says,
14 [reads] As a result of Defendants' conduct alleged
15 in the verified amended complaint, Mattingly Auto
16 Sales has suffered monetary loss, including, but
17 not limited to, interest and fees on money not lent
18 and damage to its business relationships.

19 Do you recall signing that?

20 A. It sounds familiar, but. . .

21 Q. Okay. Is that true?

22 A. Yes.

23 Q. All right. So we covered damages
24 earlier, but do you -- what is your best
25 understanding of -- of the amount of your damages

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1 as we sit here today?

2 A. I wouldn't --

3 MS. LASKY: Objection.

4 A. I wouldn't have any idea about that.

5 BY MR. MCCARTER:

6 Q. Okay. What is your understanding of the
7 type of damages you have as we sit here today?

8 A. I -- like I said, once again, I -- I just
9 wouldn't have any idea; wouldn't know how to
10 answer that one.

11 Q. Okay. So I -- I think you said you
12 sometimes would work on some cars you acquired
13 at auction before you sold them; is that right?

14 A. Correct.

15 Q. Okay. What -- I mean, just give me some
16 examples of what that might look like.

17 A. Cleanup, tires, maybe some paint work,
18 just various.

19 Q. All right. And those things cost money?

20 A. Absolutely.

21 Q. And do -- do you have some way to track
22 those and take them off out of your profit on the
23 unit?

24 A. Yes.

25 Q. Okay. And how do you do that?



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1 A. What -- what do you mean?

2 Q. How do you figure out -- how do you keep
3 track of what you --

4 A. Oh.

5 Q. -- spend on a car --

6 A. We have a fi --

7 Q. -- that's not --

8 MS. LASKY: Wait. Wait a minute.

9 BY MR. MCCARTER:

10 Q. Let me finish.

11 A. I'm sorry.

12 Q. How do you keep track of what you spend
13 on a car besides just purchase price and figure out
14 what your net profit is?

15 A. We have a file for each individual, say,
16 like a repair shop, paint shop, different -- any time
17 a ticket's made, it goes to that -- into their folder.

18 Q. Okay. But you track that by car with
19 the --

20 A. Yeah. We --

21 Q. -- deal jackets --

22 A. -- also can do it by cars.

23 Q. -- with the dealer jackets we talked about
24 before; right?

25 A. Yes.

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1 Sales.

2 Q. Okay. And is he -- does he reside in
3 Hardinsburg, too?

4 A. No, he lives in another town.

5 Q. Where does he live?

6 A. Garfield.

7 Q. Kentucky?

8 A. Yes.

9 Q. Okay. What about Mr. Anthony? Do you
10 still do business with him?

11 A. Yes. He buys -- he'll buy a couple a
12 year.

13 Q. Where does he reside?

14 A. I think McDaniels, Kentucky.

15 Q. Okay. And what about Mr. Fentress? Do
16 you still do business with him?

17 A. Yes.

18 Q. And --

19 A. Hardins --

20 Q. -- where does he reside?

21 A. -- Hardinsburg.

22 Q. And how many does he buy a year?

23 A. Well, this is the first year, so -- I don't
24 know yet.

25 Q. Okay. Do you -- do you know anything

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1 about Auction Access? Does that ring a bell?

2 A. Oh, yes. Yes.

3 Q. Are these guys registered as reps for you
4 with Auction Access or directly at the auctions?

5 A. Directly at auctions.

6 Q. Okay.

7 A. Mr. Barger was Auction Access, because
8 that's a Manheim -- that's a -- Manheim uses them.
9 So I know he --

10 Q. Okay.

11 A. -- was through Manheim.

12 Q. Okay.

13 A. But not now, of course.

14 Q. Do you have any sense of how your
15 pre-2012 net income as Mattingly Auto Sales, Inc.
16 compares to other NextGear dealers pre-2012?

17 A. No.

18 Q. Do you have any sense of how your net
19 income compares to other NextGear dealers
20 since 2012?

21 A. No.

22 Q. Okay. Did you ever have a transaction
23 with NextGear that you -- you had floored with
24 NextGear that had to be unwound and taken off the
25 NextGear line?

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1 A. I'm sure that I have sometimes if there
2 was an arbitration issue on a car, but I don't
3 recall.

4 Q. Okay. So that would be a car you bought,
5 then you would take it back for arbitration, and
6 you would take it off the line somehow?

7 A. Yes. That -- that -- they would just ta --
8 call them and say we -- the car got turned back in.
9 And I don't believe they -- I -- I just don't believe
10 they even charged me fees. I wouldn't -- wouldn't
11 swear to it, but I'm sure it's happened; just don't
12 recall.

13 Q. Okay.

14 MR. MCCARTER: Okay. I'm done.

15 MS. LASKY: I do have a few questions.

16 MR. MCCARTER: Okay.

17 MS. LASKY: Okay.

18 EXAMINATION

19 BY MS. LASKY:

20 Q. Mr. McCarter was asking you about the
21 transactions between Breckenridge and Mattingly.
22 Do you recall that?

23 A. Yes.

24 Q. Okay. The price that was assigned to the
25 transaction between Breckenridge and Mattingly,

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1 was that verified by Manheim or DSC in any way,
2 to your knowledge?

3 A. Yes, they would -- yes.

4 Q. And how was that?

5 A. I -- I -- I wouldn't know. They would -- if
6 it was -- I guess, if it was over what they called
7 the limit of value, they would let me know.

8 Q. Okay. Did they ever let you floor plan
9 anything that was over the limit of value?

10 A. Yes, older cars were standard -- you
11 know, standard like that, like a -- say a -- as an
12 example, say a 1980 Chevrolet Ford that I pick up
13 today, it might have book value of a few thousand
14 dollars, but it might be worth 10.

15 Q. And that was approved --

16 A. Yes.

17 Q. -- by Manheim?

18 A. They always approved it; yes.

19 Q. And then that was approved by DSC?

20 A. Yes.

21 Q. Okay. Now, do you recall discussions
22 about the time of the repossession there was one
23 car that was sold but was not paid off to DSC in
24 time? Do you recall those?

25 A. Yes.

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1 Q. What -- what can you tell us about that?

2 A. Well, that was my mistake and it -- it's
3 probably in this [sic] records. And I -- I --
4 actually, let me look -- look it up and show it to
5 you.

6 The vehicle was purchased, sold to an ve --
7 an individual. When -- when it came time at the
8 repossession, I had not paid it off because I
9 overlooked it, because the car was listed -- it was
10 a sport track.

11 And your -- guys are familiar with a sport
12 track, but it was listed as Explorer, which
13 technically it is an Explorer sport track. And I just
14 overlooked it. And that's the own -- you know,
15 that's -- that's what happened on that one.

16 Q. Okay. And do you recall the questions
17 about when you would receive title to a vehicle
18 that you paid for by cash or check at an auction?

19 A. Yes.

20 Q. And when you floor planned a car, did you
21 receive the title when you got the vehicle at the
22 auction?

23 A. No.

24 Q. Do you know who got the title?

25 A. The floor plan company.

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1 Q. Okay. Do you know when they got the
2 title?

3 A. No, I don't have -- have that information.
4 I'm assuming they -- they would not -- if --
5 whenever the title came in, that day or later, they
6 would have to pay for it to receive the title, but
7 I'm not privy to that information of when and all
8 that.

9 Q. Do you have any reason to believe that
10 the floor plan company would receive the title
11 before they paid for the car?

12 A. No.

13 Q. And does that apply whether it was a
14 title-absent car or a title that was --

15 A. The same.

16 Q. -- available -- sorry, or a title that was
17 available the -- the same day?

18 A. I would not know; yeah. I would assume
19 it would be the same.

20 Q. Okay. And when you sell a vehicle to a
21 customer or to an auction, what do you need to
22 give the customer or the auction in order for you
23 to get paid?

24 A. Well, if -- typically, if I bought a car at
25 the auction and put it on floor plan or at auction,



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1 and I -- I would get the car, I -- if I sold the car, I
2 would not receive -- let's just say John Doe.

3 John Doe purchased the car from me. And he
4 financed it at ABC Bank, and they approved the
5 loan. I would have to pay off the vehicle at either
6 the auction or the floor plan company. They would
7 send me the title.

8 And once I did put the lien and -- and all that
9 on the title and the transferred it with the
10 lienholder being ABC Bank, ABC Bank would issue
11 me a check. So I would actually have to pay for
12 the vehicle before I received my money from the
13 bank.

14 Q. Okay. And would the money -- would
15 the -- in that instance, would the bank give you the
16 money without -- without receiving the title to the
17 car?

18 A. No, no, not without a lien.

19 MS. LASKY: That's all I have.

20 MR. MCCARTER: I -- I did have one just
21 point of clarification on that.

22 RE-EXAMINATION

23 BY MR. MCCARTER:

24 Q. So I think you said you -- you assumed
25 that the -- that the floor planner -- I'm sorry.



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1 Strike that.

2 When a car was sold title-absent, you
3 assumed that the floor planner would pay the
4 auction when the title came in; right?

5 A. I believe so, yeah.

6 MS. LASKY: Object to the form.

7 BY MR. MCCARTER:

8 Q. Okay. And that was kind of how it worked
9 with you, too; right? You said if you're buying one
10 title-absent, you'd give them a check, and they
11 wouldn't drop it until the title came in.

12 A. Correct.

13 Q. Okay.

14 MR. MCCARTER: No further questions.

15 Thank you.

16 MS. LASKY: Okay. Thank you.

17 THE WITNESS: Okay. No problem.

18 Thank you.

19 [WHEREUPON, the Deposition of Rule 30(b)(6)
20 Witness, Barry Wayne Mattingly on behalf of
21 Mattingly Auto Sales, Incorporated, concludes
22 at 1:07 p.m.]

23 .

24 .

25 .